RBI Legal News and Views

From the Editorial Desk

1. Corporate Governance can be described as Achara Samhita in Sanskrit for firms, companies or for that matter even the Government. Mahatma Gandhi enunciated this principle by calling upon the businessmen to treat themselves as 'trustees' of the wealth created by their business. The concept of trusteeship has also been advocated by Peter Drucker. Good Corporate Governance is a since *qua non* for building market confidence and ensuring stable and long term investment flows : both domestic and international.

2. Though Corporate Governance may touch upon areas like Rights and Equitable treatment of shareholders, Role of stakeholders, Disclosures and transparency and Responsibilities of the Board, the central theme running through these is the public good ahead of private good and exclusion of any personal aggrandizement at the corporate costs. Unfortunately, last few years witnessed a new breed of promoters who entered the market with the sole object of making personal gains and it resulted in a phenomenon of fly-by-night companies which vanished faster than the morning mists. People investing in such companies lost huge sums and no effective action was taken by the concerned authorities against such companies nor against their promoters, which resulted in bringing down the levels of confidence in the market. Also, globalisation of the markets opened up opportunities to raise funds in the markets abroad but which required very high standards of disclosures and transparency. Apart from these factors it was observed that existing practices on financial reporting and accounting standards and absence of clear framework for Board of Directors to control and supervise their businesses to meet competitive pressures forced the various market players to seek strengthening of the principles of Corporate Governance. It is recognised that, the well-managed companies enjoy favourable attention of the investors and are rewarded with higher valuation of their equity. Good Corporate Governance is considered as an important instrument of investor protection and also means an efficient business enterprise creating wealth to itself as also to the economy of the country.

3. Financial sector has a very dominant role to play in the economic development of the country. Further, within the financial sector banks play a vital role as the lifelines of the economy. Companies, whether banking or non-banking, are accountable to investors, regulators and stakeholders. The stakeholders comprise of suppliers, employees etc. The most important of them, insofar as banks and financial institutions are concerned, are the customers, who may be either depositors or borrowers. Protection of their interests becomes important for the regulators and so is the need to develop high standards of Corporate Governance for this purpose. As there is a conflict of interest in the role of a creditor and the role of a shareholder, the financial intermediaries having exposure to both have to do the balancing act when it comes to the representation on the Board, which is also a direct issue in evolving strict standards of the Corporate Governance. Also, related is the issue of the regulator's presence on the Board of the financial intermediary. Narasimham Committee on the Banking Sector Reforms has also highlighted the question of the mixing up of the regulatory, sovereign and ownership interests conflicting with the viable Corporate Governance.

4. The basic issue in Corporate Governance is the effectiveness and accountability of its Board of

Directors in the democratisation of its functioning. All the powers and rights vested in the Board puts the Board in a responsible position to safeguard interests of those who own the company and those of the stakeholders. The question then is, in this scenario, should Corporate Governance be a matter of legislation and in the case of the banks and financial institutions whether it is the Companies Act or there could be a specialized legislation. Alternatively, could Corporate Governance be a matter of Self-Regulation with each Board adopting a written statement of its own governance policies and regularly evaluating them from time time in accordance with the changing needs of the hour. The emerging trend appears to be judicious mix of both the kind of approaches.

5. In this issue, we present a variety of articles on current issues. The journal section opens with an article on arbitration covering the salient features of arbitration under the Arbitration And Conciliation Act, 1996 and appraising the role of arbitration as a form of alternative dispute resolution in recovery of dues in financial sector, international commercial arbitration, labour matters and other areas. Another article deals with the liability of the 'public servant', in particular the implications of the decision of the Supreme Court in L.R. Shah's case. This is followed by a study of the recent amendments to the National Housing Bank Act, 1987. Apart from this, we also present a critical analysis of the recent Supreme Court Judgement in Allahabad Bank Vs. Canara Bank on the exclusive jurisdiction of the DRTs.

6. In the Legislation Section, we have included the Insurance Regulatory and Development Authority Act, 1999. The Judgements Section covers some of the recent judgements relevant to the bankers and the financial sector. In the Book Review Section, we have reviewed 'A Guide to Customs Act, 1962', by Dr. Neelima M. Chandiramani. Further, we have introduced a new section listing out the important new arrivals to the LD Library. And to conclude, we have all our usual features like Bibliography, LD News and Mail Bag.

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JOURNAL SECTION

Arbitration - A Legal Perspective

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Introduction

In early stage of human society, a person of authority was bestowed with power to decide conflicts and disputes arising between two persons or a group of persons. The law of arbitration stems from this idea of mediation or conciliation. The word "Arbiter" was originally used as a nontechnical designation of a person to whom controversy was referred for decision irrespective of any law. Subsequently, the word "Arbiter" has been attached to the technical name of the person selected with reference to an established system for friendly determination of controversies, which though not a judicial process, is yet to be regulated by law by implication. The powers and duties of the Arbitrator, when once he is chosen, are prescribed by law and

judicial decisions, his acts and omissions are subject matters of judicial review. There is now no distinction between an Arbiter and Arbitrator.

Arbitration has been defined in Halsbury's Laws of England (4th edition para 601) as "the process by which a dispute or difference between two or more parties as to their mutual legal rights and liabilities is referred to and determined judicially and with binding effect by the application of law by one or more persons (the arbitral tribunal) instead of by a court of law."

Historical Background and Development of Arbitration

In ancient Indian system, there were several grades of arbitration e.g., the Puga or a board of persons belonging to different sects and tribes but residing in the same locality; the Sreni or Assemblies of Tradesmen and Artisans belonging to different tribes but connected in some way with each other; and lastly Kula or group of persons bound by family ties. The decision of Kula or Kinsman was subject to revision by Sreni which in turn could be revised by the Puga. From the decision of the Puga, the appeal was maintainable to Pradvivaca and finally to the sovereign and prince. The Panchayats were different systems of arbitration subordinate to the regular courts of law. The decisions of Panchayats were accepted as binding. The Panchayats were used to proceed in a informal way untrammeled by the technicalities of procedure and the laws of evidence. The Panchayats were able to dispose off simple and small matters but they were not able to deal with the complexities arising out of social and economic changes. There was virtually no change in the Panchayat system in medieval India.

In British India, the Panchayat system underwent considerable changes. In 1781 Regulation was passed which contained a provision that the Judge do recommend, and so far as he can without compulsion, prevail upon the parties to submit to arbitration of one person to be mutually agreed upon by the parties. The Regulation of 1787 empowered the Court to refer suits to arbitration with the consent of the parties. The Regulation of 1793 authorised the Court to promote reference of cases not exceeding Rs. 200/- in value to arbitration and disputes related to partnership account, debts, disputed bargain and breach of contact. In 1795, the Regulation of 1793 was extended to Benaras and Regulations of 1802, 1814, 1822 and 1883 extended the limits and jurisdiction of arbitration proceedings in various ways. In Madras, Presidency Regulation VII of 1816 authorised the district munsifs to convene district panchayats for the determination of Civil suits relating to real and personal property. The Regulation was repealed by Act VII of 1870. The Bombay Presidency Regulation VII of 1827 provided for arbitration of civil disputes. The aforesaid regulations of Bengal, Madras and Bombay continued to operate till 1.8.59. In 1859, the Act VII was passed which codified the procedure of Civil Courts except those established by the Royal Charter. Section 312 to 325 dealt with arbitration in suits. Section 326 and 327 provided for Arbitration without the intervention of the Court. The Act of 1859 was repealed by Act X of 1877. The Code of Civil Procedure was revised in the year 1882 and by Act XIV of 1882 which reproduced the provisions related to arbitration verbatim in Sections 506 to 526.

In the year 1899, the Indian Arbitration Act was passed. In the initial stage, the Act was applicable to Presidency Towns of Calcutta, Bombay and Madras. The scope of arbitration was extended and "submission" was defined as "a written agreement to submit present and future differences to arbitration whether an Arbitrator is named therein or not".

In the year 1908, the Code of Civil procedure was re-enacted. The provisions related to arbitration were set out in the Second schedule to the Code. The Code of 1908 made no substantial changes in the law of arbitration. The delay in framing a comprehensive Arbitration Act invited acerbic judicial criticism. Ultimately, the Arbitration Act of 1940 was enacted replacing the Indian Arbitration Act of 1899 and Section 89 together with Clauses (a) to (f) of section 104 (i) and the Second Schedule to the Code of Civil Procedure of 1908.

The Arbitration Act 1940 was based on the Indian Arbitration Law as propounded by the Judicial decisions supplying the vacuum or curing the lacunae in the existing Act. The need was felt to replace or comprehensively amend the Arbitration Act 1940 due to various reasons. There are certain international conventions which deal with enforcement of foreign arbitral awards. The Geneva Protocol on Arbitration Clauses 1923 came into force on 28th July 1924. The Geneva Convention on the Execution of Foreign Arbitral Awards 1927 came into force on 25th July 1929. India became a party to the Protocol and the Convention of 23rd October, 1937. The Arbitration (Protocol and Convention) Act 1937 was enacted for giving effect to the obligations under the said instruments. India also became a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 and the Foreign Awards (Recognition and Enforcement) Act 1961 was passed to give effect to the obligation under the said Convention. The Supreme Court observed "widespread abuse of arbitral processes" and underlined the need for evolving effective safeguards to prevent such abuses. The Supreme Court has further observed that "Interminable, time-consuming, complex and expensive court procedures impelled jurists to search for an alternative forum, less formal, more effective and speedy for resolution of disputes avoiding procedural claptrap and this led them to Arbitration Act, 1940 ('Act' for short). However, the way in which the proceedings under the Act are conducted and without an exception challenged in Courts, has made lawyers laugh and legal philosophers weep. Experience shows and law reports bear ample testimony that the proceedings under the Act have become highly technical accompanied by unending prolixity, at every stage providing a legal trap to the unwary. Informal forum chosen by the parties for expeditious disposal of their disputes has by the decisions of the Courts been clothed with 'legalese' of unforeseeable complexity."

The Public Accounts Committee of the Lok Sabha had also commented aversely on working of the Arbitration Act. In the light of the adverse comments received from the Supreme Court and Public Accounts Committee, Government of India referred the matter to have a second look at the provisions of the Arbitration Act to Law Commission in 1977. The Law Commission gave its recommendation in its 76th Report to the Government of India In November, 1978. The Government of India consulted the State Governments on these recommendations and 13th Law Commission also undertook further examination of its recommendation. More recently, the Arrears Committee popularly known as Malimath Committee constituted by the Government of India made the number of recommendations on various aspects of the frightful problem of mounting arrears of cases in Courts. The Law Commission had also submitted as many as 16 reports containing recommendations on various aspects of the problem of mounting arrears of cases in Courts.

On December 4, 1993 a meeting of the Chief Ministers and the Chief Justices was held under the chairmanship of the Prime Minister of India to evolve a strategy for dealing with the congestion of cases in Courts and other forums. The meeting adopted a resolution recommending that a

number of disputes may be settled by alternative means such as arbitration, mediation and negotiation. The resolution further emphasised the desirability of disputants taking advantage of Alternative Dispute Resolution (ADR), which provided procedural flexibility, saved valuable time and money and avoided the space of a conventional trial. ADR is seen as part of a system designed to meet the needs of consumers of justice, especially, in the context of recent reforms in the economic sector. The Government also felt that its economic reforms might remain incomplete if corresponding changes were not brought in the law relating to Settlement of Disputes, especially, through Arbitration and Conciliation.

The United Nations Commission on International Trade Law (UNCITRAL) was established by the General Assembly Resolution 2205 (XXI) on 17th December, 1966. The commission adopted the Model Arbitration Law on 21st June, 1985 on the basis of extensive deliberations held in its Working Group on International Contract Practices and consultations with Arbitral Institutions and individual arbitration experts. The General Assembly by its resolution 40/72 of 11th December 1985 recommended that "All States give due consideration to the Model Law on International Commercial Arbitration, in view of the desirability of uniformity of Law of Arbitral Procedures and the specific needs of International Commercial Practice. A number of countries including Australia, Bahrain, Hong Kong, Cyprus, Egypt, Scotland, Singapore, Canada, Tunisia, Finland, Mexico, Nigeria, Peru, the Russian Federation, Sri Lanka and within the United States of America, California, Connecticut, Oregon and Texas have enacted laws to give legal force to the Model Law within their jurisdiction.

The Law Ministers of States and Union Territories met under the auspices of the Union Ministry of Law, Justice and Company Affairs and observed that the 1940 Act was no longer in tune with the International thought on the subject and that a comprehensive law on arbitration be made based largely on the Model Law. They further recommended that the new law should also contain the provisions on conciliation modelled on the UNCITRAL Conciliation Rules. Based on various recommendations, ultimately, the Government of India introduced an Arbitration and Conciliation Bill, 1995 in Rajya Sabha on 16th May 1995 with a view to consolidate and amend the law relating to domestic arbitration, international commercial arbitration and enforcement of foreign arbitral awards as also to define the law relating to conciliation and for matters connected therewith or incidental thereto. In pursuance of the Rules, relating to Department - related Parliamentary Standing Committee, the Chairman, Rajya Sabha referred the bill on 17.5.1995 to the Parliamentary Committee for examination and report. The Committee held one sitting on 17th August 1995 in which the Law Secretary made a representation on the Bill. The Committee submitted its report on 28th November, 1995. Since no business could be transacted in Parliament in Winter Session in December 1995, an ordinance No. 8 of 1996 was promulgated by the President of India on 16th January, 1996 as the Arbitration and Conciliation Ordinance 1996, which has come into force on and from 25th January, 1996. It was reissued on 26th March 1996 in Gazette Extraordinary Part II Section I as Second ordinance 1996 (11.1.1996). The Arbitration (Protocol & Convention) Act 1937, the Arbitration Act 1940 and the foreign awards (recognition and enforcement) Act 1961 have been repealed by the Saving Clause of the Ordinance. As the Bill still could not be passed by the Parliament, the ordinance was re-promulgated as 3rd ordinance 27th of 1996 on 21st June, 1996. Finally, the bill XXX - C of 1995 was introduced in the late Budget Session of 1996. It was passed by the Rajya Sabha on 16th July and the Lok Sabha on 2nd August, 1996. It received the President's assent on 16th August, 1996 and was notified on 19th August, 1996 as No. 55 in Gazette of India Extraordinary Part II

Section I and the Act viz., the Arbitration and Conciliation Act 1996 came into force on the 22nd August, 1996.

Salient Features of Arbitration and Conciliation Act, 1996

The Arbitration and Conciliation Act 1996 contains 86 sections, besides the Preamble and 3 Schedules. The Act is divided into four parts. Part I contains general provisions on arbitration. Part II deals with enforcement of certain foreign awards. Part III deals with conciliation. Part IV contains certain supplementary provisions. The three schedules reproduce the texts of the Geneva Convention of the Execution of Foreign Arbitral Awards. 1927, the Geneva Protocol on Arbitration Clauses 1923 and the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 respectively. The salient features of the Act are as under :

(i) Commencement of Arbitral Proceedings : There are clear provisions in the Act on the question as to when arbitral proceedings can be said to have commenced. Section 27 of the Act provides that unless otherwise agreed by the parties, the arbitral proceedings in respect of the particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.

(ii) Transparency in the matter of decision making : The Act provides for transparency in the matter of decision making by arbitral tribunal by requiring that the arbitral tribunal should give reasons upon which its arbitral award is based. Section 31 (3) of the Act provides that the arbitral award should state the reasons upon which it is based unless (a) the parties have agreed that no reasons are to be given, or (b) the award is an arbitral award on agreed terms under section 30.

(iii) No specific time limit has been prescribed : The Act does not prescribe a specific time limit within which an arbitral award is to be rendered. Prescription of a time limit in the earlier Act had led to enormous litigation in the matter of extension of time. However, non-prescribing of the time limit does not mean that the tribunal is free to prolong the arbitration as much as it wants. Section 14(1)(a) of the Act provides that the mandate of an arbitrator shall terminate if he becomes de-jure or de-facto unable to perform his functions or for other reasons fails to act without undue delay.

(iv) Supervisory role of Courts minimised : The Act seeks to minimise the supervisory role of the Courts on arbitral tribunals. The Courts can intervene only after the award is made by the Arbitral Tribunal. (Sections 5, 13, 16 & 34). However, the special jurisdiction conferred by the constitution on the Supreme Court and the High Courts remains undisturbed.

(v) Arbitral Tribunal can decide on its challenge etc. : The Act provides that the Arbitral Tribunal can decide on the challenge to the continuance of an arbitrator as also on the question of the tribunal's jurisdiction. The tribunal can also rule on any objection with respect to the existence or validity of the arbitration agreement (Sections 12 to 16).

(vi) Equal treatment to parties etc. : Chapter V of the Part I of the Act lays down very clear principles concerning equal treatment of parties, place of arbitration, commencement of arbitration proceedings etc.

(vii) Tribunal can settle the disputes by mediation, conciliation or other procedures : The Act permits an Arbitral Tribunal to use mediation, conciliation or other procedures during the

arbitral proceedings with a view to encouraging settlement of disputes (Section 30).

(viii) Clear provisions on the award of interest : As there were conflicting and confusing rulings by the Courts in the matter of award of interest by the arbitrators, Section 31 (7) provides clear provisions about the award of interest by the tribunal.

(ix) Tribunal can order interim measures : The Act enables the Arbitral Tribunal to order interim measures in respect of the subject matter of the disputes. Section 17 provides that the Arbitral Tribunal may at the request of the party, order a party to take any interim measure of protection as the Arbitral Tribunal may consider necessary in respect of the subject matter of the disputes. This is an addition to the power of the Court to pass interim measures. (Section 9)

(x) Ground for challenging the award made very specific : Section 34 provides the grounds for challenging the award. The grounds on which the award can be challenged are very limited and specific, and the award cannot be challenged on any other ground other than the grounds mentioned in the section.

(xi) Defines the Award : The Act makes it clear that all awards given within India are domestic awards and all awards given in foreign country are foreign awards. Thus, the controversy as to what constitute the foreign award has been set at rest.

Comparison of the Act with UNCITRAL Model Law : The Act closely follows the provisions of the UNCITRAL Model Law. However, it differs from the Model Law in following respects :

(a) No. of arbitrators : Section 10 of the Act deals with the number of arbitrators in an Arbitral Tribunal and provides that the number of arbitrators shall not be even number. The Model Law does not contain such limitations. Where the parties fail to determine the number of arbitrators, the Model Law provides that the number of arbitrators shall be three. Section 10 (2) provides in such an eventuality the Arbitral Tribunal shall consists of a sole arbitrator.

(b) Appointment of Arbitrator/s by the Court : In the matter of appointment of arbitrator/s, where the parties fail to reach an agreement, the Model Law permits the parties to approach a Court or other authority specified in the national law for appointment of the third arbitrator or sole arbitrator as the case may be. However, Section 11 empowers the Chief Justice of the High Court concerned or any person or institution designated by him to appoint the arbitrator. Further, in the case of international commercial arbitration the Chief Justice of India or any person or institution designated by him can appoint the arbitrator. Section 11 (10) empowers the Chief Justice of India or the Chief Justice of High Court, as the case may be, to make such a scheme as he may deem appropriate for dealing with such appointments.

(c) Challenging the Arbitrator : The Model Law provides the procedure for challenging an arbitrator. It empowers the tribunal to decide on the challenge and if a challenge is not successful, the challenging party may request a court or other authority to decide on the challenge. While such a request is pending, the Arbitral Tribunal may continue the arbitral proceedings and make an award. Section 13 does not permit the challenging party to approach the court at that stage. However, after the award is made, the party could challenge the award on the ground that the arbitrator has wrongly rejected the challenge.

(d) Challenging of Jurisdiction of arbitral tribunal : Under the Model Law, if the Arbitral

Tribunal turns down the plea that it has no jurisdiction, the concerned party can approach the Court to decide the matter. However, section 16 does not make any provision to approach the Court at that stage.

(e) Additional provisions which are not found in the Model Law : The following provisions have been made which are not there in the Model Law :

(i) Provisions regarding award of interest :{Section 31 (7)}.

(ii) Provisions regarding cost of an arbitration : {Section 31}.

(iii) Provisions regarding enforcement of the award, in case the award is not challenged within the prescribed period or where an award has been challenged, but the challenge is turned down : {Section 36}.

(iv) Provisions for appeal in respect of certain matters : {Section 37}.

(v) Provisions regarding fixing the amount of deposit or supplementary deposit as an advance for the cost of an arbitration : {Section 38}.

(vi) Provisions for lien on arbitral award and deposits as to cost etc. : {Sections 39 to 43}.

International Commercial Arbitration

Due to rapid growth of trade and commerce, disputes in international commercial transactions have been developed and a large number of disputes are being adjudicated by the different international arbitration tribunals.

The International Chamber of Commerce (ICC) has established a Court of Arbitration in Paris in 1923 to settle the international commercial disputes. The ICC has framed ICC Rules of Arbitration. The court provides for the settlement by arbitration of business disputes of an international character in accordance with the ICC Rules. This court deals with the disputes which concerns international trade interest and parties involved belong to different countries. The nationality or domicile of the party or if party is a body corporate, the brain centre or the central control and management of the said company are determining factors of an international commercial arbitration. The international commercial arbitration relates to disputes between the businessman or corporations in many areas of the commercial law, including importing and exporting, joint ventures, agencies agreements, financing, construction and various other business activities which constitute international commerce. To determine as to which law will be applicable to decide the international commercial arbitration, various factors as to the place of arbitration, nationality of the parties and the place of enforcement of the award, and the conflict rules have to be considered. The so called lex locus contracts, lex locus solutions and lex fori are the laws which are to be considered in case of application to international commercial arbitration. In terms of the ICC Rules there are following stages of the international commercial arbitration :

Pre-hearing meeting : Before hearing of reference to arbitration, there should be a properly planned pre-hearing meeting or conference which is very useful by way of saving time and money at the hearing. The international guidelines of the tribunal set out and illustrative list of

topics at the pre-hearing meeting :

(a) clarification of the issues presented and the relief sought;

(b) identification of any issues to be considered as preliminary questions;

(c) status of any settlement discussions;

(d) whether any further written statements, including any reply or rejoinder, is requested by the arbitrating parties or required by the Arbitral Tribunal;

(e) fixing a schedule for submission by each arbitrating party of a summary of the documents or lists of witnesses or other evidence it intends to present;

(f) fixing a schedule for submission of any documents, exhibits or other evidence which the Arbitral Tribunal may then require;

(g) whether voluminous and complicated data should be presented through summaries, tabulations, charts, graphs or extracts in order to save time and costs;

(h) desirability of appointing an expert by the Arbitral Tribunal, and if so the expert's qualifications and term of reference; whether the arbitrating parties intend to present experts, and, if so, the qualification of and the areas of expertise to be covered by any such expert;

(i) determining what documentary evidence will require translation;

(j) fixing a schedule of hearings;

(k) other appropriate matters.

(ii) Written submissions : After the appointment of arbitrators, and the procedure to be followed is decided, the parties exchange some form of written submissions. The written submissions include claimant's initial statement of case and the respondent's counter claim, if there is one. If the claimant omits to refer to some claims in his initial written submission, or fails to identify a dispute with sufficient clarity, he runs the risk of successful plea by the respondent at a later stage that the Arbitral Tribunal has no jurisdiction to determine the particular claim or group of claims.

(iii) Evidence : After the exchange of documents is over, the parties have to produce evidence in support of their case. In international commercial arbitration, the best evidence rule is followed by relying primarily on contemporary documents as the weight of such evidence is very great. The authenticity of the documents must be capable of proof, if challenged by the other party. However, it is not always necessary to produce the original documents or certified copies, unless there is some special reason for examination of the original.

(iv) Production of documents : The arbitrators have the authority and jurisdiction to cause documents to be produced, which they consider necessary to decide the matter in issue before them. If a party fails to comply with the Arbitral Tribunal orders in relation to production of documents, the Arbitral Tribunal simply takes note to the party's failure to comply with the order and draws the appropriate adverse inference in relation to particular issue in respect of which the

production of documents was ordered.

(v) Production of witnesses : The parties to the arbitration may produce the witnesses and the party who produces the witness examines him in chief and the other party cross examines unless declined and re-examination on point raised in the cross examination only. The Arbitral Tribunal also may put question for clarification and explanation whenever necessary. The oral stage of examination of witnesses is kept as short as possible.

(vi) Inspection of subject matter : In appropriate cases, it is necessary for the tribunal to inspect subject matter of the dispute i.e., usually a site or a plan. This question mainly arises in construction contracts and in dispute arising out of performance of process plant etc. An Arbitral Tribunal has wide discretion as to the manner in which it proceeds with an inspection of the subject matter of the dispute.

The UNCITRAL Arbitration Rules and the ICC Rules are silent on the question of inspection of the subject matter of the dispute. In international commercial arbitration, the disputes are disposed off in a short time, as the parties are given a specific time to submit their case and argue on the same. For the sake of convenience and to avoid the delay, the parties are required to submit the written arguments and are allowed to supplement the written arguments by oral arguments, if they so desire. in no case, the disputes prolong more than a year.

Arbitration in Labour Matters

A voluntary reference of an individual dispute lies to an arbitrator any time before the dispute is referred for adjudication under Section 10 of the Industrial Disputes Act, 1947 (IDAct) to a Labour Court, Tribunal or National Tribunal. An arbitration under Section 10A of the I.D. Act, 1947 is outside the purview of Arbitration Acts, of 1940 or 1996 and covers arbitrations under this section. The arbitration can lie either with employer and the workman or with a recognised union of the workmen, when a trade union exists. Unlike in the Act of 1996 it provides for an award by an umpire where the arbitrators are equally divided in their opinion. The arbitration agreement provides as to who would be the arbitrators, but the parties can opt for even the presiding officers of a Labour Courts, Tribunal or National Tribunal to act as arbitrators. The arbitration award is enforceable on the expiry of thirty days from the date of its publication under Section 17 of the I.D. Act.

Recovery of Dues in Financial Sector

One of the main functions of the Banks and the Financial Institutions is to give loan to the industrial houses and borrowers for different purposes. The Non Performing Assets (NPAs) of the banks have increased tremendously. The quantum of NPA has increased from Rs. 38,385.16 crores (in 1994-95) to Rs. 51,710.50 crores (in 1998-99) in five year period. The main reason for increase of non performing assets is non-recovery of the loan granted by the banks and financial institutions to the different debtors. At present, the legal system of the country is responsible for non disposal of crores of suits pending before the different courts in India. The Government has appointed various committees to sort out the problems of non performing assets of the banks and financial institutions. In this connection, Tiwari Committee and Narasimham Committee are worth mentioning. The banks and financial institutions at present face considerable difficulties in recovering the dues from the clients and enforcement of security charged with them due to the

delays in the legal proceeding. A significant portion of the funds of the banks and the financial institutions is thus blocked in unproductive assets, the values of which keep deteriorating with the passage of time. The banks also incur substantial amounts of expenditure by way of legal charges which add to their overheads. The question of speeding up the process of recovery was examined in great detail by committee set up by the Government under the Chairmanship of late Shri Tiwari. The Tiwari Committee recommended, interalia, the setting up of the special tribunals which could expedite the recovery process. With the intention of setting up of tribunals for recovery of debts due to banks and financial institutions, the Recovery of Debts Due to Banks and Financial Institutions Act 1993 was passed. In terms of this Act, the tribunals have been constituted in Bombay, Delhi, Chennai and Calcutta. This Act is applicable where the amount of debt due to any bank or financial institution or to a Consortium of banks or financial institutions of less than ten lac rupees have to be filed before the Civil Courts under the provisions of Civil Procedure Code. The Act provides that the appeals from the decision of the Debt Recovery Tribunals will lie to Debts Recovery Appellant Tribunal. Unfortunately, the tribunals have not been able to dispose of the cases as fast as it was expected and in the tribunals also lot of delay is caused, due to procedural matters and absence of infrastructure available to these tribunals. Even though arbitration is considered to be one of the quicker modes in alternative disputes resolution, the bar of jurisdiction under Section 18 of this Act creates a doubt as to whether the subject matter falling within the jurisdiction of the debt recovery tribunal could be arbitrated upon under the Arbitration and Conciliation Act, 1996.

Opportunity of Disputes Redressal by Arbitration

Arbitration is better than litigation, conciliation better than arbitration and prevention of legal disputes better than conciliation. John J.A. Sharkay and John B. Dorter in commercial arbitration have stated that commercial arbitration has the advantages of (a) privacy, (b) comparative informality, (c) potential expedition, and (d) expertise and understanding of the arbitrator. The customary disadvantages include : (a) the arbitrator being relatively unqualified in the rule of evidence, he cannot weigh facts and other evidence, (b) the arbitrator being a layman cannot apply law, (c) non-legally trained arbitrator has impulses of compromise, sympathy and the like. The arbitration of disputes is not advantageous where the issues are likely to be legal issues. It is very difficult to challenge a non speaking arbitration award and the fairness in the arbitration. Of course much depends on the selection of the arbitrator with the right personal qualities. In an arbitration the parties have to bear the arbitrator's fees which may substantially add to the cost of proceedings. Therefore, other methods of redressal of disputes have been tried by the parties like Alternative Dispute Resolution (ADR) and conciliation.

Alternative Dispute Resolution (ADR)

In USA various forms of alternative dispute resolution have been introduced owing to high cost of litigation and commercial arbitration. The companies of USA doing business in Europe and else where resort to ADR. In this type of resolution, parties are required to send their attorneys to a meeting generally with a Judge or a Magistrate after completion of discovery of each side's claim and/or position. In the conference, the Judge seizes the opportunity to focus the attention of the parties on the issues they are trying to avoid for settlement of the disputed areas. Some judges take many assertive steps to bring about a negotiated settlement and some take a reasonable attitude for settlement of the disputes. Sometimes, another technique known as "summary jury trial" is adopted. It is a non binding proceeding in which advocates informally

present their respective cases in a court room to a body of purely advisory jurors. The jurors advisory verdict is given to help the parties to a further negotiation for settlement. In England, a Centre for Dispute Resolution has been established in London for resolving disputes through amicable settlement. The centre is a non profit centre which offers advice on settling disputes between the parties by means of mediation and after techniques of ADR. Similar centre had also been opened in Delhi.

As per Jeff Senger Deputy Senior Counsel for Dispute Resolution at US Department of Justice at Washington@, the ADR has proved to be useful in matters connected with family disputes like divorce, child custody, disputes arising between employer and employees and in commercial areas. The mediator need not be a lawyer and even a layman could act in that capacity. However, the US Justice Department has short listed that the person acting as a mediator should have 49 different qualities like credibility, tactfulness, time management, unbiased attitude, fearlessness etc. Therefore ADR has become quite popular as it is quicker, less expensive and it involves lesser procedural hassles. According to one survey, nearly 95 to 96 per cent parties who take their disputes to ADR were satisfied not only with the final outcome of their dispute, but also about the procedure involved in it, whereas only 40-45 per cent in the court cases were satisfied with the judgement given by the courts, which not only takes nearly two to three years for disposal, but also involves a very high cost where the lawyer charges minimum $ 100-300 per hour.

Conciliation and Mediation

In conciliation, the conciliator draws up the terms of an agreement for settlement after having detailed discussion with the parties to the disputes. Conciliator is also to help the parties to a dispute reach an amicable settlement. Each party is invited to a conciliation conference to place their view points before the conciliator who takes notes and gets clarified on any complicated issue. The conciliator after the conclusion of the conference may talk to each party separately and ascertain their "bottom line" i.e., the figure at which each will be prepared to settle. The conciliator will thereafter propose a solution to the parties. In mediation, disputes are taken to a mediator who is accepted by the disputants themselves and his role is to help them reach a negotiated settlement of their disputes. He may see each party privately and listen to its view points and impress upon each party to understand the view point of each party. His principal task is to bring the parties together so that they can arrive at an agreed solution to the disputes. Mediation and conciliation are long established methods of resolving disputes at the institutional level and they are adopted far less often than arbitration. The latter method is also provided under the Arbitration and Conciliation Act 1996. It is observed that arbitration of trade disputes is institutionalised to some extent inasmuch as the trade bodies like Chamber of Commerce offer infrastructure facilities and forum to get the disputes of their members settled amicably through arbitration. The Indian Council of Arbitration, which is sponsored by the Ministry of Commerce, Government of India offers organisational and individual memberships and operates a panel of arbitrators for different kinds of domestic and international commercial disputes. In the area of banking, the Reserve Bank is contemplating institutionalising arbitration of the interbank as well as the banker - customer disputes through the mechanism of the banking ombudsman, provided the value of the subject matter does not exceed Rupees Ten lakhs. When set up, such arbitration would prove to be non expensive, efficacious and effective and would also reduce the burden of the Courts.

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Public Servant -
But still not Liable as Such?

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The Supreme Court of India has recently held in *L.R. Shah's* case[2] that the Registrar and other officers mentioned in Sec. 161 of the Maharashtra Co-operative Societies Act 1960 (MCSA) are not public servants for the purposes of the Indian Penal Code 1860 (IPC) and the Prevention of Corruption Act 1947 (PCA). This paper examines the reasons and the implications of the said decision of the Supreme Court.

*** Public Servant - Who is?**

2. Sec. 21 of IPC states that the words 'public servant' denote a person falling under any of the twelve descriptions listed therein. It does not provide that a person deemed under any other Act to be a public servant shall also be a public servant under Sec. 21. It can be seen from some of the descriptions given in Sec. 21 that Judges, officers of the Govt. who have the duty to prevent offences, to protect the public health, safety or convenience etc. are public servants.

*** Deemed Public Servant**

3. In many Acts[3] it is provided that the authorities under the respective Acts shall be deemed to be public servants under Section 21 of IPC. Sec. 161 of MCSA which was in issue in *L.R. Shah's* case, reads as under :

"161. Registrar and other officers to be public servants - The Registrar, a person exercising the powers of the Registrar, an officer as defined in Clause (2)) of Sec. 2, or a person appointed as an Official Assignee under subsection (2) of Sec. 21-A, or as an administrator under Sec. 77-A or 78, or a person authorised to seize books, records or funds of a society under sub-section (3) of Section 80 or to audit the accounts of a society under Section 81 or to hold an inquiry under Se. 83, or to make an inspection under Sections 84 or 89-A or to make an order under Sec. 88 or a person appointed as a member constituting a Cooperative Court under Section 911-A or the Co-operative Appellate Court under Sec. 149 or a Liquidator under Sec. 103, shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (XLV of 1860)."

*** Offences by public servants**

Chapter IX of IPC deals with offences by or relating to public servants. The offences under Sec. 161 to 165A of IPC which dealt with taking gratification other than legal remuneration in respect of an official act by a public servant or using corrupt or illegal means to influence public servant etc. have been omitted[4]. However, those offences are dealt with in Section 5 of PCA. There is no separate definition of 'public servant' under PCA. Section 2 of PCA reads as under.

"2. **Interpretation -** For the purposes of this Act 'public servant' means a public servant as

> defined in Sec. 21 of the IPC."

As such, a public servant as defined in Sec. 21 of IPC can be prosecuted for the offences under Sec. 5 of PCA.

*** The Question**

L.R. Shah's case was an appeal to the Supreme Court by State of Maharashtra against the judgement of a Division Bench of the Bombay High Court which had considered *inter alia* the following question :

> "Whether a person defined as 'officer' under clause (2) of Section 2 of the Maharashtra Cooperative Societies Act, 1960 is a 'public servant' within the meaning of section 2 of the Prevention of Corruption act, 1947 (2 of 1947), by virtue of the provisions of Section 161 of the Maharashtra Co-operative Societies Act, 1960 read with section 21 of the Indian Penal Code?"

The Supreme Court observed that a legal fiction enacted in an Act is normally restricted to that Act and cannot be extended to cover another Act. As such, though the legislature had incorporated the provisions of Sec. 21 of IPC into MCSA in order to define a 'public servant', the Court held that it is not sufficient to prosecute such 'public servant' for having committed an offence under IPC. In other words, the expression 'public servant' used in MCSA will have the same meaning as in Section 21 of IPC, but the expression 'public servant' in IPC and PCA will not cover the persons who are deemed to be public servants under MCSA.

*** What is missing?**

The proposition that definition of any expression for the purposes of an Act is restricted to that Act only and not applicable to other Acts is not disputed. However, in this case, the said proposition appears to have frustrated the very purpose of Sec. 161 of MCSA. The very purpose of deeming the officers referred to therein as 'public servants' appears to be to cover them under provisions of IPC and PCA. It is obvious that bringing the said officers under the provisions of IPC and PCA was to ensure that any misuse of power and misconduct committed by them is punishable under the said provisions.

It appears that this aspect has not been adequately canvassed before the Supreme Court. It could have been pointed out that the MCSA does not contain any other provision relating to a public servant under IPC and as such, there was no need to deem the officers concerned as 'public servants' under Sec. 21 of IPC. Further, it could have been argued that such a narrow interpretation would render the provisions of Sec. 161 of the MCSA redundant and that an interpretation which renders any statutory provision redundant should not be adopted.

*** Form v. Intent**

The Court has noticed that it was open to the State Legislature to amend Sec. 21 of IPC as the same is covered under Entry 1 of List III of the Seventh Schedule of the Constitution of India. Because the State Legislature has not amended Sec. 21 of IPC, the Court felt that reference to Sec. 21 of IPC in Sec. 161 of the MCSA is not sufficient to prosecute the persons concerned for the offences under the IPC or PCA. It can be argued that the reasoning given by the Court amounts to giving more importance to the form than to the intent of the legislature.

*** Mischief rule of interpretation**

It is appreciated that penal statutes need to be interpreted strictly and that the expressions cannot be given a very wide meaning so as to expand its meaning. However, to suppress the mischief of misuse of power by officers concerned and advance the remedy to the public by bringing such officers to book, the deeming provision of Sec. 161 of the MCSA could have been held to be sufficient. Attention of the Court could have been drawn to the language of Sec. 161 of MCSA that it does not say that the expression 'public servant' in MCSA will have the same meaning as in Section 21 of IPC, but says that the officers mentioned therein shall be deemed to be public servants within the meaning of Section 21 of IPC, thereby making PCA applicable to the officers concerned. The principle of suppressing the mischief and advancing the remedy has been applied by the Supreme Court in criminal cases also. In this connection the following observations of the Supreme Court[5] while interpreting Sec. 138 of Negotiable Instruments Act may be referred to.

> "We are of the opinion that even though section 138 is a penal statute, it is the duty of the court to interpret it consistent with the legislative intent and purpose so as to suppress the mischief and advance the remedy. ....

Hence, when the cheque is returned by a bank with an endorsement "account closed", it would amount to returning the cheque unpaid because "the amount of money standing to the credit of that account is insufficient to honour the cheque" as envisaged in Sec. 138 of the Act".

*** Authorities Relied**

In L.R. Shah's case reliance is placed on the judgement of the Supreme Court in *Kulkarni's*[6] case in which a Municipal Councillor was not held to be public servant. Sec. 302 of the Maharashtra Municipalities Act 1965 also provides that every councillor and every officer or servant of a council shall be deemed to be a public servant within the meaning of the Sec. 21 of IPC. It is however submitted that though similar provisions were involved in Kulkarni's case, the said provisions have not been interpreted. The Supreme Court in that case relied heavily on the history and evolution of the 'concept' of a 'public servant' as contemplated in Sec. 21 of IPC, discussed in *Antulay's*[7] case. In *Antulay's* case the Supreme Court was examining the question whether a member of the legislative assembly is a public servant and whether sanction has to be obtained for prosecuting him. In *Anthulay's* case the provisions similar to Sec. 161 of the MCSA were not in question for interpretation. The Court has laid down only the general principles. Therefore, only *L.R. Shah's case* is the direct authority for the proposition that provisions similar to Sec. 161 MCSA are not sufficient to bring the officers concerned under the purview of PCA.

*** The implications**

The deterrent effect which PCA is supposed to have on public servants from being corrupt, has been taken away in *L.R. Shah's case* in respect of the officers mentioned in Sec. 161 of MCSA.

*** What next?**

If the intention of the legislature, which has enacted provisions similar to Sec. 161 of the MCSA is to bring such officials under the purview of PCA, some other terminology will have to be employed. It may be necessary to incorporate the penal provisions of PCA in all those legislation where it is intended that the concerned officers should be covered under the PCA.

1. The author thanks Shri G.R. Reddy, Legal Officer, for his valuable assistance.

2. State of Maharashtra V/s L.R. Shah & Ors (2000) 2 SCC 699.

3. Please see Section 302 of Maharashtra Minicipalities Act, 1965.

4. Sec. 31 of Prevention of Corruption Act, 1988.

5. NEPC Micon Ltd. Vs. Magma Leasing Ltd., 1999 (96) Comp.Cas.822 at 829 & 830.

6. R.D. Kulkarni Vs. State of Maharastra (1985) 3SCC 606.

7. R.S. Nayak Vs. A.R. Anthulay (1984) 2 SCC 183.

There is no substitute for character, and there is no rule about where you find it.

- Nizer Louis

Christianity is part of the law of England.

- Lord Eldon

Recent Amendments to the National Housing Bank Act, 1987 - Salient Features

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1.0 Background

1.1 The National Housing Bank (NHB)[1] was established as an apex housing financial institution to function as the principal agency for the promotion of housing finance institutions at various levels (local and regional), to co-ordinate the activities of these institutions, to promote mobilisation of resources for housing and to extend financial support to the housing finance institutions. In addition to the above, it also formulates policies designed to promote housing in the country and provide guidelines for the working of all the agencies connected with housing[2].

1.2 In order to meet the above objectives, the NHB was conferred with powers to regulate the deposit acceptance activities of the housing finance institutions similar to those available to Reserve Bank of India (RBI) in respect of the Non-Banking Financial Companies (NBFC). The housing finance companies, which are a sub-set of NBFC[3], were exempted from the provisions of the Reserve Bank of India Act as amended in 1997 for the reason that such companies fall under the regulatory framework of the NHB. This also necessitated the conferring of powers on the housing bank similar to those available to the RBI pursuant to the amendment of 1997.

2.0 Amendment Act, 2000: An Introduction

2.1 While considering the issue of conferring regulatory powers on the housing bank, the experience gained in its operations over a decade was also taken into account. It has been noticed that housing loans being generally of long-term duration, cause locking of funds of housing finance institutions. Hence, it was thought appropriate to augment their capacity to provide more finance by adopting asset securitisation and development of a secondary mortgage market in the country. In that direction, the role of housing bank as a principal agency in the field of housing finance was taken into account and it was thought appropriate that the housing bank should be entrusted with the responsibility to develop the market in housing mortgages in the country. At the same time, having regard to the economic scenario pursuant to introduction of economic reforms, while it was considered necessary to enlarge the capital and shareholders' base of the housing bank, it was also thought appropriate to make it obligatory on the part of the housing bank to offer its shareholding to institutions, besides the RBI. The need for extending the permissible scope of business of the housing bank was considered and it was felt desirable to authorise it to undertake certain additional business like financing agricultural and rural development banks, making of loans and advances for residential township cum housing development projects and undertaking or participating in housing mortgage business[4].

2.2 The new provisions have been introduced by amendments to the NHB Act, 2000 for ensuring the smooth working of the housing bank by vesting the requisite powers to achieve the aforesaid object, to safeguard the interests of depositors and to promote healthy and universal growth of housing finance companies in the country.

2.3 An assessment as to how effective the amendments would be in achieving the aforesaid object is not possible at this stage as it is not the provisions of an Act alone which make it really effective; rather the mode of enforcement thereof also plays equal and important role in achieving the object of an enactment in its real terms. However, in this article an attempt has been made to consider the nature of amendments brought into force and also the implications thereof.

3.0 Amendments : the main provisions

The important amendments that have taken place in the year 2000 to the NHB Act, are discussed below.

3.1 Capital of the housing bank

As per the amended provisions (Section 4), the authorised capital of the housing bank has been raised from Rupees 100 crores to Rupees 350 crores and these provisions also enable the Central Government to increase the authorised capital up to Rupees 2000 crores in consultation with RBI. The shareholders base is now widened (previously RBI was the only shareholder of the housing bank) to accommodate the scheduled banks, public financial institutions, housing financial institutions or other institutions as may be approved by the Central Government. According to these provisions, the shares held by such approved institutions should not fall below 51% of the issued capital.

3.2 Management of the housing bank

The Act now provides (Sections 5 and 6) that two of the Directors to be appointed should have experience in the working of institutions involved in providing funds for housing or be engaged in housing development or have worked in financial institutions or scheduled banks. Further, two directors are now to be appointed by the shareholders other than the Reserve Bank, the Central Government and other institutions owned or controlled by the Central Government.

The Chairman if he is a whole time director, shall exercise all the powers and functions of the NHB and if he is not a whole time director, then, the Managing Director will exercise such powers and functions.

3.3 Business of the housing bank

The business of the housing bank has been expanded (Sections 14 and 15) to include certain additional business. These businesses are financing the agricultural and rural development banks, making loans and advances for projects to build residential townships, undertaking securitisation[5] of housing loans, setting-up mutual funds and undertaking or participating in the housing mortgage insurance business. Flexibility in the matters of borrowing and acceptances are provided for in the amendment.

3.4 Charge on the Property offered as security

Provisions have been made in Section 16A supplemental to the procedural requirements in the creation of charge on an immovable property offered as collateral security for financial assistance granted by the housing bank. Under the new section, charge on an immovable property offered as a collateral security can be created by way of execution of a written declaration in the form set out in the Third Schedule to the Act stating therein the particulars of the immovable property which is proposed to be offered as security or collateral security, as the case may be. On execution of such declaration, which also includes the covenant requiring the executant to agree that the dues relating to the assistance, if granted, shall be a charge on such immovable property, if the housing bank grants any financial assistance the dues relating to such assistance shall without prejudice to the rights of any other creditor holding any prior charge or mortgage in respect of the immovable property so specified, be a charge under the new section, on the property so specified in the declaration. This Section also provides for making variation in said declaration or revocation thereof by the executant with the prior approval of the housing bank. Unlike the provisions of Section18 A (discussed herein after which provides exemption from registration in respect of the document refereed to therein) the provisions of Sub-section (4) of Section16 stipulates that the declaration therein is a document registrable as an agreement under the provisions of the Registration Act, 1908.

3.5 Amount and Security to be held in Trust

As per the new Section 16B , the borrowing institution is obliged to pay to the housing bank, any sums received by it in repayment or realisation of loans and advances, to the extent of the accommodation granted by the housing bank, by way of finance or refinance and the receipt of such amount by the borrowing institution shall be deemed to be a receipt in trust for the housing bank and till such amount is paid (in proportion to the outstanding amount) to the housing bank the borrowing institution shall be deemed to be holding such amount in trust for the housing bank. Under Sub-section (2) of this Section, in case of an accommodation granted by the housing

bank to a borrowing institution in relation to loans and advances granted by such institution, any security held by such institution in relation to such loans and advances shall be deemed to be held by such institution in trust for the housing bank.

3.6 Securitisation

Although provisions of the new Section 18A do not stipulate the procedural aspects relating to securitisation of the loans granted by the housing finance institutions and scheduled banks, the provisions of this section include a reference to the instruments in the form of debt obligations or trust certificates of beneficial interest or other interest by whatever name called, to make it clear that there is a scope for securitisation of such loans. Clause (b) of this section provides for exemption to the aforesaid instruments from registration. Accordingly although such instruments are transferable, registration thereof shall not be compulsory[6].

3.7 Recovery of dues and arrears of land

3.7.1 There has been a long-standing demand from the housing finance institutions for a speedier method of recovery of dues from the defaulting borrowers. Accordingly separate provisions have been made for application to Recovery Officer, sale of the property (offered as security for any assistance) by the Recovery Officer in the event of default on the part of the borrower etc under Chapter VA (Sections 36C to 36Z)

3.7.2 The provisions of Section 18B render procedural support to the housing bank. As per this Section, in cases where any amount is due to NHB under an agreement in respect of securitisation of loans of housing finance institutions and scheduled banks, the housing bank may be able to recover the amount due by making an application to the State Government for the recovery of amount due to it. If the State Government is satisfied, it will issue a certificate for the amount to the Collector, who then shall proceed to recover it as arrears of land revenue. These provisions are on the lines of those in the State Financial Corporation Act, 1951[7].

3.8 Adjudicating Authority

3.8.1 The new chapter VA has been inserted to provide for the appointment of Recovery Officer [Section 36D (1)], establishment of Appellate Tribunal to be known as Housing Finance Debt Recovery Appellate Tribunal (Section 36 I) appointment of officers and other employees (Section 36M) and also includes provisions pertaining to mechanism for the recovery of dues of the housing financial institutions from the defaulters.

3.8.2 The Central Government in consultation with NHB appoints the Recovery Officer. The powers and duties of the Recovery Officer are to be specified by the Central Government by way of a notification [Section 36D(2)]. An application has to be made before a Recovery Officer by the institution that has to recover dues from the borrower (Section 36E). The Recovery Officer shall then call upon both the parties to hear the matter. The Recovery Officer may allow any claim of set of or counter claim made by the borrower against the approved financial institution or person. The Recovery Officer may then make an interim order by way of injunction or stay or attachment against the borrower debarring him from transferring, alienating or disposing of any property offered as security. If the borrower fails to comply with the order within a specified time, the Recovery Officer may take possession of such property (Section 36F). The Recovery Officer shall order the borrower to pay for the costs, charges, expenses incurred in connection

with the proceedings and if such costs are paid by the borrower the property shall not be disposed of or transferred by the Recovery Officer. If the property is sold, then the Recovery Officer shall, in writing, request the Chief Metropolitan Magistrate or the District Magistrate to take possession of the property and return the same to the Recovery Officer (Section 36H).

3.8.3 Any person aggrieved by the order of the Recovery Officer may go before the Appellate Tribunal. The appeal has to be filed within 45 days from the date of the order made by the Recovery Officer. In case of delay in filing the appeal, the Appellate Tribunal may entertain the appeal if it is satisfied that there was a sufficient cause for such delay (Section 36S). The Tribunal shall not entertain the appeal of the borrower, if he has not deposited 75% of the money as determined by the Recovery Officer (Section 36T).

3.8.4 The Appellate Tribunal is to consist of one person known as the Presiding Officer who shall hold office for a period of '5' years or until the age of sixty five years, whichever is earlier (Section 36L

3.8.5 The Recovery Officer and the Appellate Tribunal are not bound by the procedure laid down by the Code of Civil Procedure, 1908 but shall act in accordance with the principles of natural justice [Section 36U(1)]. They have also been empowered to regulate their own proceedings. Any proceeding before the Recovery Officer or the Appellate Tribunal is deemed to be a judicial proceeding [Section 36U(3)]. The Presiding officer, employees and officers of the Tribunal and the Recovery Officer are deemed to be public servants (Section 36W).

3.9 Other important amendments

3.9.1 NHB has now been empowered to acquire rights in relation to all the institutions involved in housing finance(Section 18), determine the policy and issue directions to housing finance institutions(Section 30A), give directions requiring housing financial institutions to have credit ratings for accepting deposits. (Section 31). The Act also provides for NHB to grant registration to housing financial institutions for carrying on their business if they have a net owned fund of Rupees 25 lakhs or such other higher amount as NHB may notify (Section 29A). In addition to the minimum capital requirement, the housing financial institutions are required to maintain investment of certain percentage of assets in unencumbered approved securities. (Section 29B) There is also a provision for the creation of a Reserve Fund from a sum not less than 25% of the net profit every year before the declaration of divided. (Section 29C).

3.9.2 NHB may prohibit acceptance of deposits and alienation of assets by housing finance institutions (Section 33A). It can file winding up petition against the housing finance institutions under certain circumstances (Section 33B). NHB can now provide nomination facility to depositors of housing financial institutions in a manner prescribed by rules made by the Central Government under Section 45ZA of the housing Banking Regulation Act, 1949 (Section 36B) .The Board of the NHB can now delegate powers to the officers of the housing bank (Section 43A), and it can make regulations (Section 55). Further, Any disclosure required to be made by the housing financial institutions to NHB of any information shall not be called to be produced as evidence in any court of law (Section 35A).

4.0 Overview and Conclusions

The Amendment to the National Housing Bank is a welcome one. The increase in the number of

shareholders and the appointment of directors by those shareholders will change the outlook of the housing bank. The accountability of the housing bank would increase and therby the need to observe the principles of corporate governance. More funds could now be mobilised and appropriated to the meet the growing needs in the housing sector. The credit rating of institutions is necessary as lot of players without any experience may stall the system as experienced in the past scams in the financial sector. The additional powers to the housing bank and the power to resort to securitisation of assets and the provision for non-registration on such securitisation is an encouraging sign for the housing bank in expanding its business.

The creation of the Tribunal or the Recovery Officers for the purposes of adjudication especially for the housing financial institutions to recover the dues from the borrowers is an encouraging sign for the institutions. However, it is felt that an amendment to the Recovery of Debts Due to Banks and Financial Institution Act, 1993 would have been better. The definition of 'debt' in Section 2(g) of the Recovery of Debts Due to Banks and Financial Institution Act, 1993 may be amended to include the Housing Finance Institutions. The Debt Recovery Tribunal has wider powers for disposal of cases and the creation of this new Tribunal would only bear an additional burden to the exchequer.

I stand here for law

Merchant of Venice (IV i 142)

- And see Bander, Ed ward J., "Shakespeare and the Law", in Case and Comment (January-February, 1968) p.52.

The law isn't perfect but it certainly beats whatever is in second place.

- Kojak (T.V. comment), September 22, 1974.

If every existing statute were repealed, there would be enough left of what courts regardsas law to decide most of the controversies between private citizens. And I do not supose many of us would live very differently than now.

- Jackson, Robert H., "Law and Law givers," 12 Alabama Lawyer 92(1951) p.93.

* The author would like to thank Shri B.B. Tiwari, Jt.L.A, RBI for his comments on this article.

1. In this article 'National Housing Bank or NHB' is also referred to as 'the housing bank'.

2. See the Statement of Objects and Reasons, The AIR Manual, 5th edn. vol. 35, Nagpur : All India Reporter, 1989 at p. 899.

3. See the Statement of Objects and Reasons in the Speech by the Honorable Finance Minister of India, Shri Yashwant Sinha to the introduction of this Amendment Act on 10th March 2000.

4. *ibid*

5. Securitisation is the process through which the illiquid assets are transferred into a more liquid form of assets and distributed to a broad range of investors through a negotiable financial instrument. The lending institution's assets are removed from its balance sheet and are instead funded by the investors. The securities are backed by the

expected cash flows from the assets. Securitisation has a number of advantages to the seller or the originator, investor and debt markets. For the seller, Securitisation mainly results in receivables being replaced by cash thereby improving the liquidity position. Secutitisation facilitates better asset liability management by reducing market risks resulting from the interest rate mismatches. This process enables the issuer to recycle the assets more frequently, thereby improving earning. Transparency is improved since securitisation results in identifiable assets in the balance sheet. This process has to be done prudentially as it can leave risks with the originating bank without allocating capital back to them.

6. Section 17 of the Registration Act, 1908 requires compulsory registration of documents that creates an interest, right etc.

7. Section 32(G) of the SFC Act, 1951.

Exclusive Jurisdiction of the DRTs: An Overview in the Light of Recent Supreme Court Judgement in Allahabad Bank Vs. Canara Bank

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1. Introduction

The recent Supreme Court judgement, Allahabad Bank Vs Canara Bank [(2000)4 SCC406], is a very important decision regarding the jurisdiction of the Debt Recovery Tribunals (DRTs.). This judgement uheld the exclusive jurisdiction of DRTs in the case of recovery of a debt due to a bank over any other forums including the Company Courts in the winding up proceedings.

2. Statutory provisions

The Recovery Of Debts Due to Banks and Financial Institutions Act,1993 (RDB Act) came into force on June 24th 1993.As stated in the Preamble to the Act, the Act provides for "the establishment of Tribunals for expeditious adjudication and recovery of debts due to bank and financial institutions and for matters connected therewith or incidental thereto". The main objective of the Act is to provide for a forum to adjudicate the claims due to bankis and other financial institutions and to facilitate the recovery of the same without undergoing unnecessary hardship caused by lengthy civil litigations. As suggested by the Tiwari Committee, (which examined the legal and other difficulties faced by the banks and financial institutions,) the a Act provided for the setting up of Special Tribunals for the recovery of the dues of the banks and financial institutions by following a summary procedure. The Act provides a procedure that is distinct from the existing Code of Civil procedure in order to ensure speedy adjudication.

Ordinance 1 of 2000, which came into force on 17th January 2000, amended some sections of the original Act of 1993. The definition of 'debt' in section 2(g) has been amended to include 'claims' by banks and financial institutions and also the liability under a decree or otherwise. So it gave wider scope to the definition of 'debt'.

Section 17 and 18 are very important as they deal with the jurisdiction, power and authority of

the DRTs. Accordingly to sec 18, " On and from the appointed day , no court or other authority shall have, or be entitled to exercise, any jurisdiction, powers or authority (except the Supreme Court and High Court exercising jurisdiction under Art 226 and 227 of the Constitution) in relation to the matters specified in Sec 17". A reading the two sections clearly shows that DRTs have got exclusive jurisdiction to decide applications for recovery of debts due to banks or financial institutions. The Tribunal has to initially adjudicate the liability of the defendant and then issue the certificate as provided under Sec 19(22).Under Sec 18, the jurisdiction of any other court or authority, which would otherwise have had jurisdiction, but for the provisions of the Act, is ousted and power to adjudicate upon the liability is exclusively vested in the Tribunal.

Another important provision to be considered is Sec 34, which gives the Act overriding effect over other Acts. Sec 34(1) provides that except as provided under subsection(2), the provisions of the Act shall have effect not withstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act. Under subsection (2), the provisions of this Act of Rules made thereunder shall be in addition to and not in derogation of, the Industrial Finance Corporation Act 1951, The Unit Trust Of India Act , 1963, The Industrial Reconstruction Bank Of India Act 1984 , And Sick Industrial Companies Act 1985.

These provisions clearly state that the RDB Act overrides other laws to the extent of their "inconsistency" with the Act.; The Supreme court in the present case held that, "the prescription of an exclusive Tribunal both for adjudication and execution is a procedure clearly inconsistent with realization of these debts in any other manner"[1]

3. Existing Law - different views

There have been some differences in the views of various High Court as to the applicability of the principle of purposive interpretation of the RDB Act and Companies Act 1956. In various judgments the courts have held that there is a special purpose behind the provisions in Sec 442, 446 and 537 of the Companies Act 1956. In Sudarshan Chits Ltd v O Sukumaran Pillai [2] the court observed that ' ' instead of allowing claims to be proceeded against these comapnies in various civil courts , Parliament declared that wherever winding up proceedings were pending or when an order of winding up was passed, it was necessary to save the company "from this prolix and expensive litigation and to accelerate the disposal of winding up proceedings", and "a cheap and summery remedy " was devised by conferring jurisdiction on the Company Court to entertain suits and proceedings in respect of claims for and against the company. That being the object behind enacting section 446(2) it was held that the Companies Act" must receive such construction at the hands of the court as would advance the object and at any rate not thwart it".[3] This interpretation was applied by some courts against the Tribunals jurisdiction.

In many later decisions of various High Courts and the Supreme court, the special purpose behind the enactment of the RDB Act has been considered while interpreting the Act. In ICICI v Vanjinad Leathers Ltd., [4] the Kerala High Court held that, the Act is special law to deal with the applications by the banks and financial institutions for recovery of debts. Companies Act 1956, is also a special law. Sec 446 of the companies Act the non_obstanti clause excludes all other laws with regard to pending suits in which a company in liquidation is partly. The 1993 Act is also a special law, enacted by parliament, itself. So when the latter special law was enacted, the Parliament would have certainly in mind the provisions of the earlier special law. Therefore the

latter special law ill prevail over the former. Thus exercise of the power by the Company Court under Sec 446 of the Companies Act, 1956 is excluded by sec 34 of the RDB Act 1993. It was held in this case that to file the suit u7nder 1993 Act, leave of the Company Court is not necessary.

Further in ICICI v Srinivas Agencies and Others[5] the court held that the Company Court would also bear in mind the rationale behind the enactment of Recovery Debts Due to Banks and Financial Institutions Act, 1993.

4. Facts of the case

Allahabad Bank, the appellant, in this case, had obtained a simple money decree against the debtor company, M/S. M.S. Shoes (East) Co. Ltd. from the Debt Recovery Tribunal at Delhi under the RDB Act. Thereafter the appellant filed a recovery case before the Recovery Officer. The Respondent, Canara Bank, had also filed an application as a secured creditor before the same Tribunal for the recovery of the debt from the same debtor company. The respondents application remained undecided when the present case came up before the Supreme Court. Further a third party had filed a winding up petition against the debtor company. In that case, at the instance of the Respondent Company, the court passed an order under sections 442 and 537 Companies Act 1956, staying any further sales of the assets of the debtor company and also restraining the disbursement of monies already realized in other sales. This order of the Company Court has been challenged in this case. Canara Bank, the respondent had contended that the Allahabad Bank was obliged to seek leave of the Company Court under the Companies Act, 1956 and Company Court can stay the proceedings for the ultimate purpose of deciding the priorities.

After the Appellant obtained decree from the DRT, some properties of the company had been sold by the Recovery Officer. The appellant contended that the Tribunal under the RDB Act can itself deal with the question of appropriations of the sale proceeds and priorities in respect of sale of company properties held at the instance of the appellant. and that the appellant alone is entitled to all the sums so realized. Canara Bank wanted to be impleaded to these sale proceeds along with the Allahabad Bank.

5. Points for consideration before the court

The issues involved in this case may be mainly considered as follows.

(1) Whether in respect of proceedings under the RDB Act at the stage of 'adjudication' of claims for money due to the banks or financial institutions and at the stage of 'execution' for recovery of monies under the RDB Act, the Tribunal and the Recovery Officers are conferred exclusive jurisdiction?

Regarding this point, the exclusive jurisdiction of DRTs have been uphled by the Court. Sections 17,18 and 25 of the RDB Act deal with this matter. The Court held that jurisdiction of the Tribunal in regard to adjudication is exclusive. as the RDB Act requires, the Tribunal alone to decide applications for recovery of debts de to banks or financial institutions. The Court observed;

> "Even in regard to 'execution' the jurisdiction of the Recovery Officer is exclusive. Now a

> procedure has been laid down in the Act for recovery of the debt as per the certificate issued by the Tribunal and this procedure is contained in Chapter V (Sec 25 - 30). It is not the intendment of the Act that while the basic liability of the defendant is to be decided by the Tribunal under Section 17, the banks/financial institutions should go to the Civil Court or the Company Court or some other authority outside the Act for actual realization of the amount. The certificate granted under Section 19 (22) has, in our opinion to be executed only by the Recovery Officer. No dual; jurisdictions at different stages are contemplated"6

The Court further held that, the provisions of Section 34 give the Act overriding effect over other legislations regarding the subject and concluded that the adjudication of liability of the certificate are respectively within the exclusive jurisdiction of the Tribunal and the Recovery Officer and no other Court or authority much less the Civil or Company Court can go into the said questions relating to the liability and the recovery except as provided in the Act.7

(2) Does the Act override the provisions of the Section 442, 446 and 537 of the Companies Act?

This is in relation to whether the Company Court can stay the proceedings before the Tribunnal or the Recovery Officer under Section 442 and whether the said Court can stall the proceedings under the Section 537 unless leave is obtained. This also raises the question regarding 'priorities' under Section 446 (2) (d) read with Section 529, 529-A, and 530 of the Companies Act. The question is whether the Company Court alone can decide priorities among creditors or whether the Tribunal can do this in view of Section 19 (19) of the RDB Act, as introduced by Ordinance 1 of 2000. The appellant argued that the leave of the Company Court is not necessary. The Supreme Court considering the argument putforth by both the parties held that, "the appellants case under RDB Act, with an additional section like Section 34, is on a stronger footing for holding that leave of the Company Court is not necessary under Section 537 or under Section 446 for the same reason. If the jurisdiction of the Tribunal is exclusive, the Company Court cannot also use its power under Section 442 against Tribunal/Recovery Officer. Thus Sections 442, 446 and 537 cannot be applied against the Tribunal.[8]

6. Special Law Vs. General Law

It has been held by many High Court that the Companies Act, 1956 is general Act and does not prevail over RDB Act. But there can be a situation in law where the same statute is treated as a special statute vis-a-vis one legislation and again as a general statute vis--a-vis yet another legislation.

Alternatively, the Companies Act, 1956 and RDB Act can both be treated as special laws and the principle that when there are tow special laws, the later will normally prevail over the former, if there is a provision in the latter Special Act giving it overriding effect, can also be applied. Such a provision, viz. Section 34 is there in RDB Act.

The Court relied on the 'Maharashtra Tubes Ltd. Vs. Stage Industrial & Investment Corporation of Maharashtra'[9] held, where it had considered the inconsistency between two special; laws, (in that case question was between, 2 Acts, viz Finance Corporation Act and Sick Industries Companies (Special Provisions) Act, 1983). The latter contained Section 32, which gave it overriding effect over the former. Therefore, in view of Section 34 of RDB Act, the said Act overrides the Companies Act to the extent there is anything inconsistent between the Acts.

The Supreme Court after referring to various decisions of the High Courts held that, "at the stage of adjudication under Section 17 and execution of the certificate under Section 25 etc. the provisions of the RDB Act, 1993, confer exclusive jurisdiction on the Tribunal and Recovery Officer in respect of debts payable to banks and financial institutions and there can be no interference by Company Courts under Section 442 read with Section 537 or under Section 446 of the Companies Act. In respect of the monies realized under the RDB Act, the question of priorities among the banks and financial institutions and other creditors can be decided only by Tribunal under the RDB Act in accordance with Section 19 (19) read with Section 529-A of the Companies Act and in no other manner.

The provisions of the RDB Act, 1993, are to the above extent inconsistent with the provisions of Companies Act and the latter Act has to prevail over the provisions of the former. This provision holds good during the pendency of winding up petition against the debtor company and also after the winding up order is passed. No leave of the Company Court is necessary for initiating or continuing the proceedings under RDB Act.

As regards the request of Canara Bank, the respondent, to be impleaded as a party, in the main application on the basis of Section 19 (2) which sub-section permits other banks or financial institutions to be impleaded in the main application filed under Section 19(1) by a bank or financial institution, the Court held that, Section 19 (2) permits such impleadment at any stage of the proceedings before a final order is passed The final order here is the order of adjudication under Section 19 (1) as to whether the debt is due or not. In the present case, the adjudication order in respect of the debt has already been made along back and therefore Section 19 (2) does not permit any impleadment in the main application under Section 19 (1) at this stage.

7. Conclusion

This decision of the Supreme Court is very reasonable in view of the purposive interpretation of the statute, viz. RDB Act, 1993. The court has analyzed the objectives of the ;legislation and the legislative history of the Act. Further, the court has upheld the exclusive jurisdiction of DRTs over Company Court. Even with regard to the determination of priorities among creditors and workmen, the DRTs have exclusive jurisdiction subject only to Section 529-A of the Companies Act, 1956.

As in case of a conflict between two special laws, it is lawful for the later in time to prevail, the interpretation of the Court is on sound footing. Since the exclusion of the Companies Act in the saving clause under section 34(2) is to be deemed to be deliberate,, thereby bringing the same under section 34(1) RDB Act, in the recovery of the debts due to banks and other financial institutions, DRTs and Recovery Officers have got exclusive jurisdiction. Considering the objects of RDB Act, the interpretation given in this judgement is very justified, but the question is how far is it justified in marginalising the interests of the secured creditors in facour of unsecured creditors holding the decree of the DRT.

1. (2000) 4 SCC 406 at para 23.
2. (1984) 4 SCC 657.
3. ibid p. 661.

4. AIR 1997 Ker 273.
5. (1996) 4 SCC 165.
8. At p.424.
9. (1993) 2 SCC 144.

JUDGEMENTS SECTION

Recent Judgements Relevent To Bankers

Joseph Raj

Asst. Legal Adviser

I. State Bank of India vs. Yasangi Ven-kateswara Rao, AIR 1999 SC 896.

(A) Banking Regulation Act (10 of 1949) Section 21 A - Bank loan - Transaction note to be reponed by court on account of excessive interest - Section 21-A enacting the prohibition is within domain of Parliament. S.A. No. 972 of 1984 dt. 16-10-1985 (A.P.) Reserved. Constitution of India Art 245, Schedule 7, list 1, entry 45.

(B) Banking Regulation Act (10 of 1949) Section 21 A - Bank loan - Interest -Amount advanced against mortgage -charging compound interest - cannot be said to be excessive.

S.A. No. 972 of 1984, dt/16-10-85 (AP) Reversed. Facts

A suit for recovery of money filed by the appellant before the District Munsif Eluru, was decreed and the same was substantially upheld by the Dist. Court. In the second appeal, one of the contentions which was raised by the respondent related to the charging of interest by the appellant. After the decree of the trial court, by the Banking Laws (Amendment) Act (I of 1984), Section 21-A was inserted in the Banking Regulation Act. The new section read as follows :

> "Notwithstanding anything contained in the Usurious Loans Act 1918 or any other laws relating to indebtedness in force in any state, a transaction between a banking company and its debtor shall not be reponed by any court on the ground that the rate of interest charged by the banking company in respect of such transaction is excessive"

Relying upon the above, it was argued on behalf of the appellant that there would be no occasion for the court to reduce the rate of interest which the borrower had contracted to pay. The High Court in the 2nd appeal entertained the plea regarding the validity of the said section and observed as follows :

> "Considering the fact that grant of debt relief has always been treated in our country as a legislative subject to be passed upon by the regional Governments alone and that the words "Relief of agricultural indebtedness" were specially added by our Constitution to enable the State Legislatures to alleviate the suffering of the farmers from their agricultural indebtedness and that the Constituent Assembly had deliberately rejected an amendment moved seeking to transfer this item to the concurrent list, I hold that Section 21-A of the Banking Regulation Act which forbids the Courts from reopening the bank loans on the

ground of excessive interest is not a law enacted by the Parliament with respect to the item of Banking."

Observations of the Court

In the appeal before the Supreme Court, the Addl. Solicitor General argued that the observations of the High Court are not correct and that the court had erred by observing that "normally where security offered by the debtor is good and adequate as it is in a case of mortgage of property, the court will hold charging of compound interest to be excessive".

The Supreme Court observed that conclusion of the High Court that the Parliament had no jurisdiction to enact Section 21-A is not correct. Section 21-A deals with the rate of interest which can be charged by a banking company. Entry 45 List I empowers Parliament to legislate with regard to banking. The section is applicable to all types of loans which are granted by a banking company whether to an agriculturist or non-agriculturist. Supreme court also disagreed with the observations of High Court that normally when a security is offered in the case of mortgage of property, charging of compound interest would be regarded as excessive. If the parties entering into a mortgage agree that in respect of the amount advanced against a mortgage, compound interest will be paid, the court cannot interfere in it and reduce the amount of interest agreed to be paid on the loan so taken. The mortgaging of a property is for the purpose of securing the loan and has no relation with the quantum of interest to be charged.

Decision

The appeal was allowed accordingly.

II. State Bank of India and Others vs. Luther Kondhpan, 2000-I-LLJ SC 275.

Orissa Miscellaneous Certificates Rules, 1984-Rule 7, Orissa Caste Certificate (for SC/ST) Rules, Rule 8(2) - Departmental Enquiry -Principles of Natural Justice - Termination of service due to cancellation of caste certificate - Employment secured against the posts reserved for SC/ST.

Facts

The respondent secured employment in the appellant's establishment against a post reserved for scheduled tribe on the basis of the scheduled tribe certificate issued by the Tahsildar. The said certificate was cancelled by the Tahsildar as it was found that the respondent does not belong to a schedule tribe. The order of cancellation was passed under Rule 7 of the Orissa Miscellaneous Certificates Rules, 1984 and Rule 8(2) of the Orissa Caste Certificate for (SC/ST) Rules. State Bank of India, the employer of the respondent decided to initiate disciplinary proceedings against the employee for having committed gross misconduct in terms para 521(4)(n) of Sastry award. The charge brought against the respondent was that he secured the appointment by frandulent means by submitting false scheduled tribe certificate and accordingly he was called upon to submit explanation. The services of the employee were terminated after considering the explanation submitted by the employee and giving opportunity to defend. The order of termination was challenged before the High Court of Orissa under article 226 and 227 of the Constitution. The High Court set aside the order of termination on the ground that the employee was not confronted with the order of cancellation of certificate during the enquiry and thereby

the employee has been denied the opportunity to show cause. It is against this order that the appellant filed the present appeal before the Supreme Court by obtaing special leave.

It was argued on behalf of the appellant that the order of cancellation of certificate passed by the Tahsildar was part of the record of disciplinary proceedings and the respondent was apprised of the said order and the view taken by the High Court was erroneous. It was argued on behalf of the respondent that he was denied an opportunity of personal hearing before the disciplinary authority. However, in the reply it is nowhere stated that the respondent desires personal hearing. Under such circumstances the order of termination cannot be held to be vitiated on that account.

Decision

In the above circumstance the appeal succeeds and is allowed. The judgement and order of the High Court of Orissa is set aside.

III. Monopolies & Restrictive Trade Practices Commission, New Delhi.

In the matter of Allahabad Bank - Respondent. Restrictive Trade Practices Enquiry No. 79 of 1994, 2000 (i) CPR 17 (MRTP).

Monopolies & Restrictive Trade Practices Act, 1969 - Section 10(a)(i) - Bank by not maintaining a waiting list for allotment of lockers and lockers being allotted on condition of making fixed deposits by customers was alleged to be indulging in unfair trade practice - Commission is precluded from exercising its jurisdiction over banking company qua its banking business - NOE was liable to be discharged.

Facts

Pursuant to the Preliminary Investigation Report submitted by the Director General (Investigation and Registration), a Notice of Enquiry (NOE) was issued on 25-5-1995 to Allahabad Bank Calcutta under section 10(a)(i) of the Monopolies and Restrictive Trade Practices Act, 1969. In the Notice of Enquiry it was alleged that Allhabad Bank was not maintaining a waiting list register for allotment of lockers in accordance with the directions of the Reserve Bank of India and lockers are allotted on the condition of making fixed deposits by the customers. Further it was alleged that the above action of the respondent - bank caused unjustified cost and placed restrictions on its customers attracting the provisions of Section 2(0)(ii) of the Act.

The Respondent bank pointed out that the subject matter of allotment of lockers by the respondent bank was covered under the direction/ instruction of Reserve Bank of India under the Banking Regulation Act, 1949 (BR Act) and the Notice of Enquiry should be discharged on this ground.

Issue

Whether the commission has jurisdiction to enquire into the charges as contained in the Notice of Enquiry.

Findings

After examination of the witness it was argued on behalf of the respondent bank that the commission had already held in other cases that it has no jurisdiction to enquire into charges as levelled against respondent bank and cited the order of the Commission in RTPE 244/97 in the matter of Director General (I & R) vs. Daewoo Motors Indian Limited.

The Division Bench of the commission had held in its order dt. 1st Sept. 1998 in RT PE 244 of 1997 as follows :

> "Section 4(2) of the MRTP Act excludes applicability there of *inter alia* to a banking Company with respect to matter in respect of which specific provisions exist *inter alia* in the BR Act. Section 6 of the BR Act enumerates forms of business in which banking Companies may engage themselves. They include lending or financing of money either upon or without security. Provision for giving loan by way of purchase of a vehicle popularly known as Auto Finance against hypothecation of the vehicle in question would certainly be included in the forms of business enumerated in Section 6 of the BR Act. Our attention has been invited by learned Advocate Mr. Suri for respondent No. 2 to Section 35A thereof providing for power of the Reserve Bank to give directions. Thereunder the Reserve Bank is empowered to issue directions to banking Companies generally or to any banking Company in particular from time to time if it is satisfied *inter alia* that in the public interest or in the interest of banking policy it is necessary to do so. It has further been provided therein that the banking Company to which such directions are issued shall be bound to comply with such directions. It thus becomes clear from the aforesaid provisions contained in the BR Act that the Reserve Bank enjoys supervisory power over conducting affairs of banking business by any and every banking Company. As aforesaid, it can issue directions if it is necessary to do so in public interest or in the interest of banking policy."
>
> "As pointed out hereinabove, the Reserve Bank under the BR Act is constituted as a Custodian *inter alia* of public interest and conducting of banking affairs by the banking Company *qua* any banking policy. This Commission can also pass a cease and desist order against any party found guilty *inter alia* of adoption of or indulgence in restrictive and /or unfair trade practices in public interest and not *de hors* thereto. In that view of the matter, it is difficult to conceive that the Reserve Bank will not issue directions in public interest if it finds *inter alia* adoption of or indulgence in any restrictive and; or unfair trade practice by any banking Company.
>
> In this view of the matter, we think that this Commission is precluded from exercising its jurisdiction over a banking Company *qua* its banking business by virtue of Section 4(2) of the MRTP Act."

Decision

On the above premises, the Notice of Enquiry issued against the respondent bank was discharged. There was no order as to costs.

LEGISLATION SECTION

The Insurance Regulatory And Development Authority Act, 1999

The Act received the assent of the President on the 29th December, 1999 and was published in the Gazette of India, (Extra.), Part II Sec. 1, No. 54, dated December 29,1999/Pausa 8, 1921.

PARLIAMENT ACT NO. 41 OF 1999

[29th December, 1999]

An Act to provide for the establishment of an Authority to protect the interests of holders of insurance policies, to regulate, promote and ensure orderly growth of the insurance industry and for matters connected therewith or incidental thereto and further to amend the Insurance Act, 1938, the Life Insurance Corporation Act, 1956 and the General Insurance Business (Nationalisalition) Act, 1972.

Be it enacted by Parliament in the Fiftieth Year of the Republic of India as follows :

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement. -

(1) This Act may be called the Insurance Regulatory and Development Authority Act, 1999.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint :

> Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

2. Definitions. - (1) In this Act, unless the context otherwise requires, -

(a) "appointed day" means the date on which the Authority is established under sub-section (1) of section 3;

(b) "Authority" means the Insurance Regulatory and Development Authority established under sub-section (1) of section 3;

(c) "Chairperson" means the Chairperson of the Authority;

(d) "Fund" means the Insurance Regulatory and Development Authority Fund constituted under sub-section (1) of section 16;

(e) "Interim Insurance Regulatory Authority" means the Insurance Regulatory Authority set up by the Central Government through Resolution No. 17(2)/94-Ins.-V, dated the 23rd January, 1996;

(f) "Intermediary or insurance intermediary" includes insurance brokers, re-insurance brokers, insurance consultants, surveyors and loss assessors;

(g) "member" means a whole time or a part time member of the Authority and includes the Chairperson;

(h) "notification" means a notification published in the Official Gazette;

(i) "prescribed" means prescribed by rules made under this Act;

(j) "regulations" means the regulations made by the Authority.

(2) Words and expressions used and not defined in this Act but defined in the Insurance Act, 1938 (4 of 1938) or the Life Insurance Corporation Act, 1956 (31 of 1956) or the General Insurance Business (Nationalisation) Act, 1972 (57 of 1972) shall have the meanings respectively assigned to them in those Acts.

CHAPTER II

INSURANCE REGULATORY AND DEVELOPMENT AUTHORITY

3. Establishment and incorporation of Authority. - (1) With effect from such date as the Central Government may, by notification, appoint, there shall be established, for the purposes of this Act, an Authority to be called "the Insurance Regulatory and Development Authority".

(2) The Authority shall be a body corporate by the name aforesaid having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to contract and shall, by the said name, sue or be sued.

(3) The head office of the Authority shall be at such place as the Central government may decide from time to time.

(4) The Authority may establish offices at other places in India.

4. Composition of Authority. - The Authority shall consist of the following members, namely :-

(a) a Chairperson;

(b) not more than five whole-time members;

(c) not more than four part-time members.

to be appointed by the Central Government from amongst persons of ability, integrity and standing who have knowledge or experience in life insurance, general insurance, actuarial science, finance, economics, law, accountancy, administration or any other discipline which would, in the opinion of the Central Government, be useful to the Authority :

Provided that the Central Government shall, while appointing the Chairperson and the whole time members, ensure that at least one person each is a person having knowledge or experience in life insurance, general insurance or actuarial science, respectively.

5. Tenure of office of Chairperson and other members. - (1) The Chairperson and every other whole time member shall hold office for a term of five years from the date on which he enters upon his office and shall be eligible for reappointment :

Provided that no person shall hold office as a Chairperson after he has attained the age of sixty five years :

Provided further that no person shall hold office as a whole time member after he has attained the age of sixty two years.

(2) A part time member shall hold office for a term not exceeding five years from the date on which he enters upon his office.

(3) Notwithstanding anything contained in subsection (1) or sub-section (2), a member may -

(a) relinquish his office by giving in writing to the Central Government notice of not less than three months; or

(b) be removed from his office in accordance with the provisions of section 6.

6. Removal from office. - (1) The Central Government may remove from office any member who -

(a) is, or at any time has been, adjudged as an insolvent; or

(b) has become physically or mentally incapable of acting as a member; or

(c) has been convicted of any offence which, in the opinion of the Central Government, involves moral turpitude; or

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a member; or

(e) has so abused his position as to render his continuation in office detrimental to the public interest.

(2) No such member shall be removed under clause (d) or clause (e) of sub-section (1) unless he has been given a reasonable opportunity of being heard in the matter.

7. Salary and allowance of Chairperson and members. - (1) The salary and allowances payable to, and other terms and conditions of service of, the members other than part-time members shall be such as may be prescribed.

(2) The part-time members shall receive such allowances as may be prescribed.

(3) The salary, allowances and other conditions of service of a member shall not be varied to his disadvantage after appointment.

8. Bar on future employment of members. -

The Chairperson and the whole-time members shall not, for a period of two years from the date

on which they ceased to hold office, as such, except with the previous approval of the Central Government, accept -

(a) any employment either under the Central Government or under any State Government; or

(b) any appointment in any company in the insurance sector.

9. Administrative powers of Chairperson. -The Chairperson shall have the powers of general superintendence and direction in respect of all administrative matters of the Authority.

10. Meetings of the Authority. - (1) The authority shall meet at such time and places and shall observe such rules and procedures in regard to transaction of business at its meetings (including quorum at such meetings) as may be determined by the regulations.

(2) The Chairperson, or if for any reason he is unable to attend a meeting of the Authority, any other member chosen by the members present from amongst themselves at the meeting shall preside at the meeting.

(3) All questions which come up before any meeting of the Authority shall be decided by a majority of votes by the members present and voting, and in the event of an equality of votes, the Chairperson, or in his absence, the person presiding shall have a second or casting vote.

(4) The Authority may make regulations for the transaction of business at its meetings.

11. Vacancies etc. not to invalidate proceedings of Authority. - No act or proceeding of the authority shall be invalid merely by reason of -

(a) any vacancy in, or any defect in the constitution of, the Authority; or

(b) any defect in the appointment of a person acting as a member of the Authority; or

(c) any irregularity in the procedure of the Authority not affecting the merits of the case.

12. Officers and employees of Authority. -

(1) The Authority may appoint officers and such other employees as it considers necessary for the efficient discharge of its functions under this Act.

(2) The terms and conditions of service of officers and other employees of the Authority appointed under sub-section (1) shall be governed by the regulations made under this Act.

CHAPTER III

TRANSFER OF ASSETS, LIABILITIES ETC. OF INTERIM INSURANCE REGULATORY AUTHORITY

13. Transfer of assets, liabilities, etc., of Interim Insurance Regulatory Authority. - On the appointed day, -

(a) all the assets and liabilities of the Interim Insurance Regulatory Authority shall stand transferred to, and vested in, the Authority.

Explanation. - The assets of the Interim Insurance Regulatory Authority shall be deemed to include all rights and powers, and all properties, whether movable or immovable, including, in particular, cash balances, deposits and all other interests and rights in, or arising out of, such properties as may be in the possession of the Interim Insurance Regulatory Authority and all books of account and other documents relating to the same; and liabilities shall be deemed to include all debts, liabilities and obligations of whatever kind;

(b) without prejudice to the provisions of clause (a), all debts, obligations and liabilities incurred, all contracts entered into and all matters and things engaged to be done by, with or for the Interim Insurance Regulatory Authority immediately before that day, for or in connection with the purpose of the said Regulatory Authority, shall be deemed to have been incurred, entered into or engaged to be done by, with or for, the Authority;

(c) all sums of money due to the Interim Insurance Regulatory Authority immediately before that day shall be deemed to be due to the Authority; and

(d) all suits and other legal proceedings instituted or which could have been instituted by or against the Interim Insurance Regulatory Authority immediately before that day may be continued or may be instituted by or against the Authority.

CHAPTER IV

DUTIES, POWERS AND FUNCTIONS OF AUTHORITY

14. Duties, powers and functions of Authority. - (1) Subject to the provisions of this Act and any other law for the time being in force, the Authority shall have the duty to regulate, promote and ensure orderly growth of the insurance business and re-insurance business.

(2) Without prejudice to the generality of the provisions contained in sub-section (1), the powers and functions of the Authority shall include, -

(a) issue to the applicant a certificate of registration, renew, modify, withdraw, suspend or cancel such registration.

(b) protection of the interests of the policy-holders in matters concerning assigning of policy, nomination by policy-holders, insurable interest, settlement of insurance claim, surrender value of policy and other terms and conditions of contracts of insurance;

(c) specifying requisite qualifications, code of conduct and practical training for intermediary or insurance intermediaries and agents;

(d) specifying the code of conduct for surveyors and loss assessors;

(e) promoting efficiency in the conduct of insurance business;

(f) promoting and regulating professional organisations connected with the insurance and re-insurance business;

(g) levying fees and other charges for carrying out the purposes of this Act;

(h) calling for information from, undertaking inspection of, conducting enquiries and

investigations including audit of insurers, intermediaries, insurance intermediaries and other organisations connected with the insurance business;

(i) control and regulation of the rates, advantages, terms and conditions that may be offered by insurers in respect of general insurance business not so controlled and regulated by the Tariff Advisory Committee under section 64U of the Insurance Act, 1938 (4 of 1938);

(j) specifying the form and manner in which books of account shall be maintained and statement of accounts shall be rendered by insurers and other insurance intermediaries;

(k) regulating investment of funds by insurance companies;

(l) regulating maintenance of margin of solvency;

(m) adjudication of disputes between insurers and intermediaries or insurance intermediaries;

(n) supervising the functioning of the Tariff Advisory Committee;

(o) specifying the percentage of premium income of the insurer to finance schemes for promoting and regulating professional organisations referred to in clause (f);

(p) specifying the percentage of life insurance business and general insurance business to be undertaken by the insurer in the rural or social sector; and

(q) exercising such other powers as may be prescribed.

CHAPTER V

FINANCE, ACCOUNTS AND AUDIT

15. Grants by Central Government. - The Central Government may, after due appropriation made by Parliament by law in this behalf, make to the Authority grants of such sums of money as the Government may think fit for being utilised for the purposes of this Act.

16. Constitution of Fund. - (1) There shall be constituted a fund to be called "the Insurance Regulatory and Development Authority Fund" and there shall be credited thereto -

(a) all Government grants, fees and charges received by the Authority;

(b) all sums received by the Authority from such other source as may be decided upon by the Central Government;

(c) the percentage of prescribed premium income received from the insurer.

(2) The Fund shall be applied for meeting -

(a) the salaries, allowances and other remuneration of the members, officers and other employees of the Authority;

(b) the other expenses of the Authority in connection with the discharge of its functions and for the purposes of this Act.

17. Accounts and Audit. - (1) The Authority shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor General of India.

(2) The accounts of the Authority shall be audited by the Comptroller and Auditor General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Authority to the Comptroller and Auditor General.

(3) The Comptroller and Auditor General of India and any other person appointed by him in connection with the audit of the accounts of the authority shall have the same rights, privileges and authority in connection with such audit as the Comptroller and Auditor General generally has in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books of account, connected vouchers and other documents and papers and to inspect any of the offices of the Authority.

(4) The accounts of the Authority as certified by the Comptroller and Auditor General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before each House of Parliament.

CHAPTER VI

MISCELLANEOUS

18. Power of Central Government to issue directions. - (1) Without prejudice to the foregoing provisions of this Act, the Authority shall, in exercise of its powers or the performance of its functions under this Act, be bound by such directions on question of policy, other than those relating to technical and administrative matters, as the Central Government may give in writing to it from time to time :

> Provided that the Authority shall, as far as practicable, be given an opportunity to express its views before any direction is given under this sub-section.

(2) The decision of the Central Government, whether a question is one of policy or not, shall be final.

19. Power of Central Government to supersede Authority. - (1) If, at any time the Central Government is of the opinion -

(a) that, on account of circumstances, beyond the control of the Authority, it is unable to discharge the functions or perform the duties imposed on it by or under the provisions of this Act; or

(b) that the Authority has persistently defaulted in complying with any direction given by the Central Government under this Act or in the discharge of the functions or performance of the duties imposed on it by or under the provisions of this Act and as a result of such default the financial position of the Authority or the administration of the Authority has suffered; or

(c) that circumstances exist which render it necessary in the public interest so to do.

The Central Government may, by notification and for reasons to be specified therein, supersede the Authority for such period, not exceeding six months, as may be specified in the notification and appoint a person to be the Controller of Insurance under section 2B of the Insurance Act, 1938 (4 of 1938), if not already done :

Provided that before issuing any such notification, the Central Government shall give a reasonable opportunity to the Authority to make representations against the proposed supersession and shall consider the representation, if any, of the Authority.

(2) Upon the publication of a notification under sub-section (1) superseding the Authority,

(a) the Chairperson and other members shall, as from the date of supersession, vacate their offices as such;

(b) all the powers, functions and duties which may, by or under the provisions of this Act, be exercised or discharged by or on behalf of the Authority shall, until the Authority is reconstituted under sub-section (3), be exercised and discharged by the Controller of Insurance; and

(c) all properties owned or controlled by the Authority shall, until the Authority is reconstituted under sub-section (3), vest in the Central Government.

(3) On or before the expiration of the period of supersession specified in the notification issued under sub-section (1), the Central Government shall reconstitute the Authority by a fresh appointment of its Chairperson and other members and in such case any person who had vacated his office under clause (a) of sub-section (2) shall not be deemed to be disqualified for reappointment.

(4) The Central Government shall cause a copy of the notification issued under sub-section (1) and a full report of any action taken under this section and the circumstances leading to such action to be laid before each House of Parliament at the earliest.

20. Furnishing of returns, etc., to Central Government. - (1) The Authority shall furnish to the Central Government at such time and in such form and manner as may be prescribed, or as the Central Government may direct to furnish such returns, statements and other particulars in regard to any proposed or existing programme for the promotion and development of the insurance industry as the Central Government may, from time to time, require.

(2) Without prejudice to the provisions of subsection (1), the Authority shall, within nine months after the close of each financial year, submit to the Central Government a report giving a true and full account of its activities including the activities for promotion and development of the insurance business during the previous financial year.

(3) Copies of the reports received under subsection (2) shall be laid, as soon as may be after they are received, before each House of Parliament.

21. Chairperson, members, officers and other employees of Authority to be public servants. - The Chairperson, members, officers and other employees of the Authority shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

22. Protection of action taken in good faith. - No suit, prosecution or other legal proceedings shall lie against the Central Government or any officer of the Central Government or any member, officer or other employee of the Authority for anything which is in good faith done or intended to be done under this Act or the rules or regulations made thereunder :

Provided that nothing in this Act shall exempt any person from any suit or other proceedings which might, apart from this Act, be brought against him.

23. Delegation of powers. - (1) The Authority may, by general or special order in writing, delegate to the Chairperson or any other member or officer of the Authority subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Act as it may deem necessary.

(2) The Authority may, by a general or special order in writing, also form committees of the members and delegate to them the powers and functions of the Authority as may be specified by the regulations.

24. Power to make rules. - (1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters; namely :

(a) the salary and allowances payable to, and other terms and conditions of service of, the members other than part-time members under sub-section (1) of section 7;

(b) the allowances to be paid to the part-time members under sub-section (2) of section 7;

(c) such other powers that may be exercised by the Authority under clause (g) of sub-section (2) of section 14;

(d) the form of annual statement of accounts to be maintained by the Authority under sub-section (1) of section 17;

(e) the form and manner in which and the time within which returns and statements and particulars are to be furnished to the Central Government under sub-section (1) of section 20;

(f) the matters under sub-section (3) of section 25 of which the Insurance Advisory Committee shall advise the Authority;

(g) any other matter which is required to be, or may be, prescribed, or in respect of which provision is to be or may be made by rules.

25. Establishment of Insurance Advisory Committee. - (1) The Authority may, by notification, establish with effect from such date as it may specify in such notification, a Committee to be known as the Insurance Advisory Committee.

(2) The Insurance Committee shall consist of not more than twenty five members excluding ex officio members to represent the interests of commerce, industry, transport, agriculture, consumer fora, surveyors, agents, intermediaries, organisations engaged in safety and loss

prevention, research bodies and employees' association in the insurance sector.

(3) The Chairperson and the members of the Authority shall be the ex-officio members of the Insurance Advisory Committee.

(4) The objects of the Insurance Advisory Committee shall be to advise the Authority on matters relating to the making of the regulations under section 26.

(5) Without prejudice to the provisions of subsection (4), the Insurance Advisory Committee may advise the Authority on such other matters as may be prescribed.

26. Power to make regulations. - (1) The Authority may, in consultation with the Insurance Advisory Committee, by notification, make regulations consistent with this Act and the rules made thereunder to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely :-

(a) the time and places of meetings of the Authority and the procedure to be followed at such meetings including the quorum necessary for the transaction of business under sub-section (1) of section 10;

(b) the transaction of business at its meeting under sub-section (4) of section 10;

(c) the terms and other conditions of service of officers and other employees of the Authority under sub-section (2) of section 12;

(d) the powers and functions which may be delegated to committees of the members under sub-section (2) of section 23; and

(e) any other matter which is required to be, or may be, specified by regulations or in respect of which provision is to be or may be made by regulations.

27. Rules and regulations to be laid before Parliament. - Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions, aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything done under that rule or regulation.

28. Application of other laws not barred. - The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

29. Power to remove difficulties. - (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty :

Provided that no order shall be made under this section after the expiry of two years from the appointed day.

(2) Every order made under this section shall be laid, as soon as may be, after it is made, before each House of Parliament.

30. Amendment of Act 4 of 1938. - The Insurance Act, 1938 shall be amended in the manner specified in the First Schedule to this Act.

31. Amendment of Act 31 of 1956. - The Life Insurance Corporation Act, 1956 shall be amended in the manner specified in the Second Schedule to this Act.

32. Amendment of Act 57 of 1972. - The General Insurance Business (Nationalisation) Act, 1972 shall be amended in the manner specified in the Third Schedule to this Act.

THE FIRST SCHEDULE

(See section 30)

AMENDMENTS TO THE INSURANCE ACT, 1938

(4 OF 1938)

1. In the Act, except in clause (5B) of section 2 and section 2B, for "Controller" wherever it occurs, substitute "Authority" and such consequential changes as the rules of grammer may require shall also be made.

2. In section 27, 27A, 27B, 31, 32A, 40A, 48B, 64F, 64G, 64-I, 64J, 64L, 64R, 64 UC, 64UM, 113 and 115, for "Central Government" wherever they occur, substitute "Authority".

3. Section 2, -

(a) after clause (1), insert the following :-

'(1A) "Authority" means the Insurance Regulatory and Development Authority established under sub-section (1) of section 3 of the Insurance Regulatory and Development Authority Act, 1999;';

(b) for clause (5B), substitute the following :-

'(5B) "Controller of Insurance" means the officer appointed by Central Government under section 2B to exercise all the powers, discharge the functions and perform the duties of the Authority under this Act or the Life Insurance Corporation Act, 1956 (31 of 1956) or the General Insurance Business (Nationalisation) Act, 1972 (57 of 1972) or the Insurance Regulatory and Development Authority Act, 1999;';

(c) after clause (7), insert the following :-

'(7A) "Indian Insurance company" means any insurer being a company -

(a) which is formed and registered under the Companies Act, 1956 (1 of 1956);

(b) in which the aggregate holdings of equity shares by a foreign company, either by itself or

through its subsidiary companies or its nominees, do not exceed twenty six percent, paid up equity capital of such Indian insurance company;

(c) whose sole purpose is to carry on life insurance business or general insurance business or reinsurance business.

Explanation. - For the purposes of this clause, the expression "foreign company" shall have the meaning assigned to it under clause (23A) of section 2 of the Income-tax Act, 1961 (43 of 1961);';

(d) in clause (14), for "section 114", substitute "this Act".

4. After section 2, insert the following :-

"2A. Interpretation of certain words and expressions. - Words and expressions used and not defined in this Act but defined in the Life Insurance Corporation Act, 1956 (31 of 1956), the General Insurance Business (Nationalisation) Act, 1972 (57 of 1972) and the Insurance Regulatory and Development Authority Act, 1999 shall have the same meanings respectively assigned to them in those Acts.".

5. Section 2B, for sub-section (1), substitute the following :-

"(1) If at any time, the Authority is superseded under sub-section (1) of section 19 of the Insurance Regulatory and Development Authority Act, 1999, the Central Government may, by notification in the Official Gazette, appoint a person to be the Controller of Insurance till such time the Authority is reconstituted under sub-section (3) of section 19 of that Act.".

6. Section 2C, in sub-section (1), after the second proviso, insert the following :-

> "Provided also that no insurer other than an Indian Insurance company shall begin to carry on any class of insurance business in India under this Act on or after the commencement of the Insurance Regulatory and Development Authority Act, 1999.".

7. Section 3, -

(a) in sub-section (1), after the first proviso, insert the following :-

> "Provided further that a person or insurer, as the case may be, carrying on any class of insurance business in India, on or before the commencement of the Insurance Regulatory and Development Authority Act, 1999, for which no registration certificate was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he had made an application for such registration within the said period of three months, till the disposal of such application :
>
> Provided also that any certificate of registration, obtained immediately before the commencement of the Insurance Regulatory and Development Authority Act, 1999, shall be deemed to have been obtained from the Authority in accordance with the provisions of this Act.";

(b) in sub-section (2), -

(i) in the opening portion, for "Every application for registration shall be accompanied by -", substitute the following :-

"Every application for registration shall be made in such manner as may be determined by the regulations made by the Authority and shall be accompanied by - ";

(ii) in clause (d), for "working capital", substitute "paid-up- equity capital or working capital";

(iii) in clause (f), in the proviso, omit "and" occurring at the end;

(iv) for clause (g), substitute the following :-

"(g) the receipt showing payment of fee as may be determined by the regulations which shall not exceed fifty thousand rupees for each class of business as may be specified by the regulations made by the Authority;

(h) such other documents as may be specified by the regulations made by the Authority;";

(c) after sub-section (2A) insert –

"(2AA) The Authority shall give preference to register the applicant and grant him a certificate of registration if such applicant agrees, in the form and manner as may be specified by the regulations made by the Authority, to carry on the life insurance business or general insurance business for providing health cover to individuals or group of individuals.";

(d) in sub-section (4), -

(i) in clause (f), for "of any rule or order made thereunder, or", substitute the following :-

"of any rule or any regulation or order made, or any direction issued thereunder, or";

(ii) in clause (h), insert "or" at the end;

(iii) after clause (h), insert the following :-

"(i) if the insurer makes a default in complying with any direction issued or order made, as the case may be, by the Authority under the Insurance Regulatory and Development Authority Act, 1999, or

(j) if the insurer makes a default in complying with, or acts in contravention of, any requirement of the Companies Act, 1956 (1 of 1956) or the Life Insurance Corporation Act, 1956 (31 of 1956) or the General Insurance Business (Nationalisation) Act, 1972 (57 of 1972) or the Foreign Exchange Regulations Act, 1973 (46 of 1973).";

(e) in sub-section (5C), -

(i) for "clause (h)", substitute "clause (h) or clause (i) or clause (j)";

(ii) for "any requirement of this Act or of any rule or order made thereunder", substitute the following :-

"any requirement of this Act or the Insurance Regulatory and Development Authority Act, 1999,

or of any rule or any regulation, or any order made thereunder or any direction issued under those Acts";

(f) after sub-section (5D), insert the following: -

"(5E) The Authority may, by order, suspend or cancel any registration in such manner as may be determined by the regulations made by it:

Provided that no order under this sub-section shall be made unless the person concerned has been given a reasonable opportunity of being heard";

(g) for sub-section (7), substitute the following :-

"(7) The Authority may, on payment of such fee, not exceeding five thousand rupees, as may be determined by the regulations, issue a duplicate certificate of registration to replace a certificate lost, destroyed or mutilated, or in any other case where the Authority is of opinion that the issue of duplicate certificate is necessary.".

8. Section 3A. –

(a) in sub-section (1), for "the 31st day of December, 1941", substitute the following :-

"the 31st day of March, after commencement of the Insurance Regulatory and Development Authority Act, 1999.".

(b) in sub-section (2), -

(i) for "prescribed fee", substitute "fee as determined by the regulations made by the Authority";

(ii) for clause (i), substitute the following : -

"(i) exceed one-fourth of one percent, of such premium income or rupees five crores, whichever is less,"

(iii) for clause (ii), substitute the following :-

"(ii) be less, in any case, than fifty thousand rupees for each class of insurance business,"

(c) in sub-section (3), for "prescribed fee", substitute "fee as determined by the regulations mady by the Authority";

(d) in sub-section (4), for "prescribed fee", substitute "fee as determined by the regulations made by the Authority, and ".

9. For section 6, substitute the following :-

"6. Requirement as to capital. – No insurer carrying on the business life insurance, general insurance or re-insurance in India on or after the commencement of the Insurance Regulatory and Development Authority Act, 1999. Shall be registered unless he has, -

(i) a paid up equity capital of rupees one hundred crores, in case of a person carrying on the business of life insurance or general insurance; or

(ii) a paid up equity capital of rupees two hundred crores, in case of a person carrying on exclusively the business as a re-insurer :

> Provided that in determining the paid up equity capital specified under clause (i) or clause (ii), the deposit to be made under section 7 and any preliminary expenses incurred in the formation and registration of the company shall be excluded :
>
> Provided further that an insurer carrying on business of Life Insurance, general insurance or re-insurance in India before the commencement of the Insurance Regulatory and Development Authority Act, 1999 and who is required to be registered under this Act, shall have a paid-up equity capital in accordance with clause (i) and clause (ii), as the case may be, within six months of the commencement of that Act.".

10. Section 6A. –

(a) in sub-section (4), in clause (b), -

(I) in sub-section (i), omit "and" occurring at the end;

(II) in sub-section (i) for "sanction of the Central Government has been obtained to the transfer", substitute "approval of the Authority has been obtained to the transfer;";

(III) after sub-clause (ii), insert the following :-

'(iii) where, the nominal value of the shares intended to be transferred by any individual, firm, group, constituents of a group, or body corporate under the same management, jointly or severally exceeds one percent of the paid up equity capital of the insurer, unless the previous approval of the Authority has been obtained for the transfer.

Explanation. - For the purposes of this subclause, the expressions "group" and "same management" shall have the same meanings respectively assigned to them in the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969).';

(b) in sub-section (11), -

(i) for "Explanation 1", substitute "Explanation";

(ii) omit Explanation 2.

11. After section 6A, insert the following :-

"6AA. **Manner of divesting excess shareholding by promoter in certain cases. -** (1) No promoter shall at any time hold more than twenty six percent, or such other percentage as may be prescribed, of the paid-up equity capital in an Indian insurance company :

> Provided that in a case where an Indian insurance company begins the business of life insurance, general insurance or re-insurance in which the promoters hold more than twenty six percent of the paid-up equity capital or such other excess percentage as may be prescribed, the promoters shall divest in a phased manner the share capital in excess of the twenty six percent of the paid-up equity capital or such excess paid-up equity capital as may be prescribed, after a period of ten years from the date of the commencement of the aid

business by such Indian insurance company or within such period as may be prescribed by the Central Government.

Explanation.- For the removal of doubts, it is hereby declared that nothing contained in the proviso shall apply to the promoters being foreign company, referred to in sub-clause (b) of clause (7A) of section 2.

(2) The manner and procedure for divesting the excess share capital under sub-section (1) shall be specified by the regulations made by the Authority.".

12. Section 7, -

(a) in sub-section (1),-

(i) omit "not being an insurer specified in subclause (c) of clause (9) of section 2"

(ii) for clauses (a) and (b), substitute the following :-

"(a) in the case of life insurance business, a sum equivalent to one percent of his total gross premium written in India in any financial year commencing after the 31st day of March, 2000, not exceeding rupees ten crores;

(b) in the case of general insurance business, a sum equivalent to three percent of his total gross premium written in India, in any financial year commencing after the 31st day of March, 2000, not exceeding rupees ten crores;

(c) in the case of re-insurance business, a sum of rupees twenty crores;"

(b) omit sub-sections (1A), (1B), (1C), (1D) and (1E).

13. Section 11,-

(a) in sub-section (1), for "calendar year", substitute "financial year";

(b) after sub-section (1), insert the following :-

"(1A) Notwithstanding anything contained in subsection (1), every insurer, or after the commencement of the Insurance Regulatory and Development Authority Act, 1999, in respect of insurance business transacted by him and in respect of his shareholders' funds, shall, at the expiration of each financial year, prepare with reference to that year, a balance-sheet, a profit and loss account, a separate account of receipts and payments, a revenue account in accordance with the regulations made by the Authority.

(1B) Every insurer shall keep separate accounts relating to funds of shareholders and policy holders.".

14. Section 13,-

(a) in sub-section (1),-

(i) for "once at least in every three years", substitute "every year";

(ii) in the first proviso, for "not later than four years", substitute "not later than two years";

(iii) after the second proviso, insert the following :-

"Provided also that for an insurer carrying on life insurance business in India immediately before the commencement of the Insurance Regulatory and Development Authority Act, 1999, the last date as at which the first investigation after such commencement should be caused by an actuary, shall be the 31st day of March 2001;";

(iv) after the third, proviso, insert the following :-

"Provided also that every insurer, on or after the commencement of the Insurance Regulatory and Development Authority Act, 1999, shall cause an abstract of the report of the actuary to be made in the manner specified by the regulations made by the Authority.";

(b) in sub-section (4), after the proviso, insert the following :-

"Provided further that the statement referred to in sub-section (4) shall be appended in the form and in the manner specified by the regulations made by the Authority.".

15. After section 27B, insert the following :-

"27C. **Prohibition for investment of funds outside India.-** No insurer shall directly or indirectly invest outside India the funds of the policy holders.

27D. **Manner and conditions of investment.-** (1) Without prejudice to anything contained in sections 27, 27A and 27B, the Authority may, in the interests of the policy holders, specify by the regulations made by it, the time, manner and other conditions of investment of assets to be held by an insurer for the purposes of this Act.

(2) The Authority may give specific directions for the time, manner and other conditions subject to which the funds of policy holders shall be invested in the infrastructure and social sector as may be specified by regulations made by the Authority and such regulations shall apply uniformly to all the insurers carrying on the business of life insurance, general insurance, or re-insurance in India on or after the commencement of the Insurance Regulatory and Development Authority Act, 1999.

(3) The Authority may, after taking into account the nature of business and to protect the interests of the policy-holders, issue to an insurer the directions relating to the time, manner and other conditions of investment of assets to be held by him :

Provided that no direction under this subsection shall be issued unless the insurer concerned has been given a reasonable opportunity of being heard.".

16. Section 28A, in sub-section (1), for "31st day of December", substitute "31st day of March".

17. Section 28B, in sub-section (1), for "31st day of December", substitute "31st day of March".

18. Section 31B,-

(a) in sub-section (1), for "Central Government" at both the places where they occur, substitute

"Authority";

(b) in sub-section (2), for "a statement in the prescribed form", substitute "a statement, in the form specified by the regulations made by the Authority";

(c) after sub-section (3), insert the following :-

"(4) Every direction under this section shall be issued by an order made by the Authority :

> Provided that no order under this section shall be made unless the person concerned has been given an opportunity of being heard.".

19. After section 32A, insert the following :-

"32B. **Insurance business in rural or social sector.-** Every insurer shall, after the commencement of the Insurance Regulatory and Development Authority Act, 1999, undertake such percentage of life insurance business and general insurance business in the rural or social sector, as may be specified, in the Official Gazette by the Authority, in this behalf.

32C. **Obligations of insurer in respect of rural or unorganised sector and backward classes.-**

Every insurer shall, after the commencement of the Insurance Regulatory and Development Authority Act, 1999, discharge the obligations specified under section 32B to provide life insurance or general insurance policies to the persons residing in the rural sector, workers in the unorganised or informal sector or for economically vulnerable or backward classes of the society and other categories of persons as may specified by regulations made by the Authority and such insurance policies shall include insurance for crops.".

20. For section 33, substitute the following :-

"INVESTIGATION

33. **Power of investigation and inspection by Authority. -** (1) The Authority may, at any time, by order in writing, direct any person (hereafter in this section referred to as "Investigating Authority") specified in the order to investigate the affairs of any insurer and to report to the Authority on any investigation made by such Investigating Authority :

> Provided that the Investigating Authority may, wherever necessary, employ any auditor or actuary or both for the purpose of assisting him in any investigation under this section.

(2) Notwithstanding anything to the contrary in section 235 of the Companies Act, 1956 (1 of 1956), the Investigating Authority may, at any time, and shall, on being directed so to do by the Authority, cause an inspection to be made by one or more of his officers of any insurer and his books of account; and the Investigating Authority shall supply to the insurer a copy of his report on such inspection.

(3) It shall be the duty of every manager, managing director or other officer of the insurer to produce before the Investigating Authority directed to make the investigation under sub-section (1), or inspection under sub-section (2), all such books of account, registers and other documents

in his custody or power and to furnish him with any statement and information relating to the affairs of the insurer as the said Investigating Authority may require of him within such time as the said Investigating Authority may specify.

(4) Any Investigating Authority, directed to make an investigation under sub-section (1), or inspection under sub-section (2), may examine on oath, any manager, managing director or other officer of the insurer in relation to his business and may administer oaths accordingly.

(5) The Investigating Authority shall, if he has been directed by the Authority to cause an inspection to be made, and may, in any other case, report to the Authority on any inspection made under this section.

(6) On receipt of any report under sub-section (1) or sub-section (5), the Authority may, after giving such opportunity to the insurer to make a representation in connection with the report, as in the opinion of the Authority, seems reasonable, by order in writing, -

(a) require the insurer, to take such action in respect of any matter arising out of the report as the Authority may think fit; or

(b) cancel the registration of the insurer; or

(c) direct any person to apply to the court for the winding up of the insurer, if a company whether the registration of the insurer has been cancelled under clause (b) or not.

(7) The Authority may, after giving reasonable notice to the insurer, publish the report submitted by the Investigating Authority under sub-section (5) or such portion thereof as may appear to it to be necessary.

(8) The Authority may by the regulations made by it specify the minimum information to be maintained by insurers in their books, the manner in which such information shall be maintained, the checks and other verifications to be adopted by insurers in that connection and all other matters incidental thereto as are, in its opinion, necessary to enable the Investigating Authority to discharge satisfactorily his functions under this section.

Explanation.- For the purposes of this section, the expression "insurer" shall include in the case of an insurer incorporated in India -

(a) all its subsidiaries formed for the purpose of carrying on the business of insurance exclusively outside India; and

(b) all its branches whether situated in India or outside India.

(9) No order made under this section other than an order made under clause (b) of sub-section (6) shall be capable of being called in question in any court.

(10) All expenses of, and incidental to, any investigation made under this section shall be defrayed by the insurer, shall have priority over that debts due from the insurer and shall be recoverable as an arrear of land revenue.".

21. Section 33A, omit "Central Government or the".

22. Section 34H,-

(a) in sub-section (1),-

(i) for "Controller", substitute "Chairperson of the Authority";

(ii) for "an Assistant Controller of Insurance", substitute "an officer authorised by the Authority";

(b) in sub-sections (5) and (7), for "Controller" wherever it occurs, substitute "Chairperson of the Authority".

23. Section 35,-

(a) in sub-section (1), for "sanctioned by the Controller", substitute "approved by the Authority";

(b) in sub-section (3),-

(i) in the first paragraph, for "to sanction any such scheme", substitute "to approve any such scheme";

(ii) in the second paragraph, for "the amalgamation or transfer if sanctioned", substitute "the amalgamation or transfer if approved".

24. Section 36,-

(a) in sub-section (1), for "may sanction the arrangement", substitute "may approve the arrangement";

(b) in sub-section (2),-

(i) for "the insurers concerned in the amalgamation, the Controller may sanction", substitute "the insurers concerned in the amalgamation, the Authority may approve";

(ii) for "contracts as sanctioned by the Controller", substitute "contracts as approved by the Authority".

25. Section 37, in clause (c), for "scheme sanctioned", substitute "scheme approved".

26. In section 40A, in sub-section (3) for the portion beginning with the words "an amount exceeding" and ending with the words "ten per cent of the premium payable on the policy", substitute "an amount not exceeding fifteen per cent of the premium payable on the policy where the policy relates to fire or marine insurance or miscellaneous insurance.".

27. Section 42, -

(a) for sub-section (1), substitute the following :-

> "(1) The Authority or an officer authorised by it in this behalf shall, in the manner determined by the regulations made by it and on payment of the fee determined by the regulations, which shall not be more than two hundred and fifty rupees, issue to any person making an application in the manner determined by the regulations, a licence to act as an insurance agent for the purpose of soliciting or procuring insurance business :

Provided that :-

(i) in the case of an individual, he does not suffer from any of the disqualifications mentioned in sub-section (4); and

(ii) in the case of a company or firm, any of its directors or partners does not suffer from any of the said disqualifications :

Provided further that any licence issued immediately before the commencement of the Insurance Regulatory and Development Authority Act, 1999 shall be deemed to have been issued in accordance with the regulations which provide for such licence.";

(b) for sub-section (3), substitute the following :-

> "(3) A licence issued under this section, after the date of the commencement of the Insurance Regulatory and Development Authority Act, 1999, shall remain in force for a period of three years only from the date of issue, but shall, if the applicant, being an individual does not, or being a company or firm any of its directors or partners does not, suffer from any of the disqualifications mentioned in clauses (b), (c), (d), (e) and (f) of sub-section (4) and the application for renewal of licence reaches the issuing authority at least thirty days before the date on which the licence ceases to remain in force, be renewed for a period of three years at any one time on payment of the fee determined by the regulations made by the Authority which shall not be more than rupees two hundred and fifty, and additional fee of an amount determined by the regulations not exceeding rupees one hundred by way of penalty, if the application for renewal of the licence does not reach the issuing authority at least thirty days before the date on which the licence ceases to remain in force.";

(c) in sub-section (3A), for the proviso, substitute the following :-

"Provided that the Authority may, if satisfied that undue hardship would be caused otherwise, accept any application in contravention of this sub-section on payment by the applicant of a penalty of seven hundred and fifty rupees.";

(d) in sub-section (4), after clause (d), insert the following :-

"(e) that he does not possess the requisite qualifications and practical training for a period not exceeding twelve months, as may be specified by the regulations made by the Authority in this behalf;

(f) that he has not passed such examination as may be specified by the regulations made by the Authority in this behalf :

Provided that a person who had been issued a licence under sub-section (1) of this section or sub-section (1) of section 64UM shall not be required to possess the requisite qualifications, practical training and pass such examinations as required by clauses (e) and (f);

(g) that he violates the code of conduct as may be specified by the regulations made by the Authority.";

(e) for sub-section (6), substitute the following :

"(6) The Authority may issue a duplicate licence to replace a licence lost, destroyed or mutilated, on payment of such fee not exceeding fifty rupees as may be determined by the regulations.";

(f) in sub-section (7), -

(i) for "fifty rupees", substitute "five hundred rupees";

(ii) for "one hundred rupees", substitute "one thousand rupees";

(g) in sub-section (8), for "fifty rupees", substitute "five thousand rupees".

28. Section 42A, in sub-section (1), -

(a) for "Controller or an officer authorised by him", substitute "Authority or an officer authorised by it";

(b) for "an application to him", substitute "an application to it".

29. After section 42C, insert the following :-

"42D. **Issue of licence to intermediary or insurance intermediary. -** (1) The Authority or an officer authorised by it in this behalf shall, in the manner determined by the regulations made by the Authority and on payment of the fees determined by the regulations made by the Authority, issue to any person making an application in the manner determined by the regulations, and not suffering from any of the disqualifications herein mentioned, a licence to act as an intermediary or an insurance intermediary under this Act :

Provided that, -

(a) in the case of an individual, he does not suffer from any of the disqualifications mentioned in sub-section (4) of section 42, or

(b) in the case of a company or firm, any of its directors or partners does not suffer from any of the said disqualifications.

(2) A licence issued under this section shall entitle the holder thereof to act as an intermediary or insurance intermediary.

(3) A licence issued under this section shall remain in force for a period of three years only from the date of issue, but shall, if the applicant, being an individual does not, or being a company or firm any of its directors or partners does not suffer from any of the disqualifications mentioned in clauses (b), (c), (d), (e) and (f) of sub-section (4) of section 42 and the application for renewal of licence reaches the issuing authority at least thirty days before the date on which the licence ceases to remain in force, be renewed for a period of three years at any one time on payment of the fee, determined by the regulations made by the Authority and additional fee for an amount determined by the regulations, not exceeding one hundred rupees by way of penalty, if the application for renewal of the licence does not reach the issuing authority at least thirty days before the date on which the licence ceases to remain in force.

(4) No application for the renewal of a licence under this section shall be entertained if the

application does not reach the issuing authority before the licence ceases to remain in force :

Provided that the Authority may, if satisfied that undue hardship would be caused otherwise, accept any application in contravention of this sub-section on payment by the applicant of a penalty of seven hundred and fifty rupees.

(5) The disqualifications above referred to shall be the following :-

(a) that the person is a minor;

(b) that he is found to be of unsound mind by a court of competent jurisdiction;

(c) that he has been found guilty of criminal misappropriation or criminal breach of trust or forgery or an abetment of or attempt to commit any such offence by a court of competent jurisdiction :

Provided that, where at least five years have elapsed since the completion of the sentence imposed on any person in respect of any such offence, the Authority shall ordinarily declare in respect of such person that his conviction shall cease to operate as a disqualification under this clause;

(d) that in the course of any judicial proceeding relating to any policy of insurance of the winding up of an insurance company or in the course of an investigation of the affairs of an insurer it has been found that he has been guilty of or has knowingly participated in or connived at any fraud dishonestly or misrepresentation against an insurer or an insured;

(e) that he does not possess the requisite qualifications and practical training for a period not exceeding twelve months, as may be specified by the regulations made by the Authority in this behalf;

(f) that he has not passed such examination as may be specified by the regulations made by the Authority in this behalf;

(g) that he violates the code of conduct as may be specified by the regulations made by the Authority.

(6) If it be found that an intermediary or an insurance intermediary suffers from any of the foregoing disqualifications, without prejudice to any other penalty to which he may be liable, the Authority shall, and if the intermediary or an insurance intermediary has knowingly contravened any provision of this Act may cancel the licence issued to the intermediary or insurance intermediary under this section.

(7) The Authority may issue a duplicate licence to replace a licence lost, destroyed or mutilated on payment of such fee, as may be determined by the regulations made by the Authority.

(8) Any person who acts as an intermediary or an insurance intermediary without holding a licence issued under this section to act as such, shall be punishable with fine, and any insurer or any person who appoints as an intermediary or an insurance intermediary or any person not licenced to act as such or transacts any insurance business in India through any such person, shall be punishable with fine.

(9) Where the person contravening sub-section (8), is a company or a firm, then, without prejudice to any other proceedings which may be taken against the company or firm, every director, manager, secretary or; other officer of the company, and every partner of the firm who is knowingly a party to such contravention shall be publishable with fine.".

30. Section 64UA, in sub-section (1), in subclause (a), for "Controller of Insurance", substitute "Chairperson of the Authority".

31. Section 64UB,-

(a) for sub-section (1), substitute the following :-

"(1) The Authority may, by notification, in the Official Gazette, make regulations to carryout the purposes of this Part.";

(b) in sub-section (2), for "rules" substitute "regulations";

(c) in sub-section (3), for "Central Government" at both the places, where it occur, substitute "Authority";

(d) in sub-section (5), for "Controller of Insurance", substitute "Chairperson of the Authority".

32. Section 64UC, in sub-section (1), in proviso, "The Controller may, with the previous approval of the Central Government", substitute "the Authority may".

33. Section 64UD, after sub-section (1), insert the following :-

> "Provided that the Chairperson of the Authority shall become the Chairperson of the Advisory Committee with effect from the commencement of the Insurance Regulatory and Development Authority Act, 1999 and function as such, and any Chairman of the Tariff Committee holding office immediately before such commencement shall cease to be the Chairman.".

34. Section 64UJ, in sub-section (5), for "Central Government", wherever it occurs, substitute "Authority".

35. Section 64UM, -

(a) in sub-section (1),-

(i) in paragraph (B), after "the Insurance (Amendment) Act, 1968", insert "but before the commencement of the Insurance Regulatory and Development Authority Act, 1999";

(ii) after paragraph (B), insert the following :-

> "(BA) Every person who intends to act as a surveyor or loss assessor after the expiry of a period of one year from the commencement of the Insurance Regulatory and Development Authority Act, 1999, shall make an application to the Authority within such time, in such manner and on payment of such fee as may be determined by the regulations made by the Authority :

Provided that any licence issued immediately before the commencement of the Insurance Regulatory and Development Authority Act, 1999 shall be deemed to have been issued in accordance with the regulations providing for such licence.";

(iii) in paragraph (C), for "as may be prescribed", substitute "as may be determined by the regulations";

(iv) in paragraph (D), in clause (i), -

(A) for item (a), substitute the following :-

"(a) has been in practice as a surveyor or loss assessor on the date of commencement of the Insurance Regulatory and Development Authority Act, 1999, or";

(B) in item (f), for "prescribed", substitute "specified by the regulations made by the Authority";

(b) after sub-section (1), insert -

"(1A) Every surveyor and loss assessor shall comply with the code of conduct in respect of their duties, responsibilities and other professional requirements as may be specified by the regulations made by the Authority.".

36. Section 64V, -

(a) in sub-section (1), -

(i) in clause (i), after sub-clause (g), insert the following :-

"(h) such other asset or assets as may be specified by the regulations made in this behalf;";

(ii) in clause (ii), -

(A) in sub-clause (b), in items (i) and (ii), for "40 per cent", substitute "50 per cent".

(B) after sub-clause (f), insert the following :-

"(g) such other liability which may be made in this behalf to be included for the purpose of clause (ii).";

(b) for sub-section (2), substitute the following :-

"(2) Every insurer shall furnish to the Authority with his returns under section 15 or section 16, as the case may be, a statement certified by an auditor approved by the Authority in respect of general insurance business, or an actuary approved by the Authority in respect of life insurance business, as the case may be, of his assets and liabilities assessed in the manner required by this section as on the 31st day of March of the preceding year.

(3) Every insurer shall value his assets and liabilities in the manner required by this section and in accordance with the regulations which may be made by the Authority in this behalf.".

37. Section 64VA, -

(a) in sub-section (1), for "at all times", substitute "at all times before the commencement of the Insurance Regulatory and Development Authority Act, 1999";

(b) after sub-section (1), insert the following :-

> '(1A) Every insurer shall, at all times, on or after the commencement of the Insurance Regulatory and Development Authority Act, 1999, maintain an excess of the value of his assets over the amount of his liabilities of not less than the amount arrived at as follows (hereinafter referred to in this section referred to as the "required solvency margin"), namely :-

(i) in the case of an insurer carrying on life insurance business, the required solvency margin shall be the higher of the following amounts -

(a) fifty crores of rupees (one hundred crores of rupees in case of re-insurers); or

(b) the aggregate sums of the results arrived at in items (I) and (II) stated below :-

(I) the aggregate of the results arrived at by applying the calculation described in item (A) below (Step 1) and the calculation described in item (B) below (Step II);

(A) for step I -

(A.1) there shall be taken, a sum equal to a percentage determined by the regulations not exceeding five per cent of the mathematical reserves for direct business and re-insurance acceptances without any deduction for reinsurance cessions;

(A.2) the amount of mathematical reserve at the end of the preceding financial year after the deduction of re-insurance cessions shall be expressed as a percentage of the amount of those mathematical reserves before any such deduction; and

(A.3) the sum mentioned in item (A.1) above shall be multiplied -

(A.3.1) where the percentage arrived at under item (A.2) above is greater than eighty five per cent (or in the case of a re-insurer carrying on exclusive re-insurance business, fifty per cent) by that greater percentage; and

(A.3.2) in any other case, by eighty five per cent (or in the case of a re-insurer carrying on exclusive re-insurance business, by fifty per cent);

(B) for Step II -

(B.1) there shall be taken, a sum equal to a percentage determined by the regulations made by the Authority not exceeding one per cent of sum at risk for the policies on which the sum at risk is not a negative figure, and

(B.2) the amount of sum at risk at the end of the preceding financial year for policies on which the sum at risk is not a negative figure after the deduction of re-insurance cession shall be expressed as a percentage of the amount of that sum at risk before any such deduction, and

(B.3) the sum arrived at under item (B.1) above shall be multiplied -

(B.3.1) where the percentage arrived at under item (B.2) above is greater than fifty per cent, by that greater percentage; and

(B.3.2) in any other case, by fifty per cent.

(II) a percentage determined by the regulations made by the Authority of the value of assets determined in accordance with the provisions of section 64V;

(ii) in the case of an insurer carrying on general insurance business, the required solvency margin, shall be the highest of the following amounts :-

(a) fifty crores of rupees (one hundred crores of rupees in case of re-insurer); or

(b) a sum equivalent to twenty per cent of net premium income; or

(c) a sum equivalent to thirty per cent of net incurred claims, subject to credit for re-insurance in computing net premiums, and net incurred claims being actual but a percentage, determined by the regulations not exceeding fifty per cent :

Provided that if in respect of any insurer, the Authority is satisfied that either by reason of an unfavourable claim experience or because of sharp increase in the volume of the business, or for any other reason, compliance with the provisions of this sub-section would cause undue hardship to the insurer, the Authority may direct, for such period and subject to such conditions such insolvency margin not being less than the lower of the amount mentioned in sub-clasue (i) or sub-clause (ii) above, as the case may be.

Explanation. - For the purposes of this subsection, the expressions -

(i) "mathematical reserves" means the provisions made by an insurer to cover liabilities (excluding liabilites which have fallen due and liabilities arising from deposit back arrangement in relation to any policy whereby an amount is deposited by re-insurer with the cedant) arising under or in connection with policies or contracts for life insurance business. Mathematical reserves also include specific provision for adverse derivations of the bases, such as mortality and morbidity rates, interest rates, and expense rates, and any explicit provisions made, in the valuation of liabilities, in accordance with the regulations made by the Authority for this purpose;

(ii) "net incurred claims" means the average of the net incurred claims during the specified period of not exceeding three preceding financial years;

(iii) "sum at risk", in relation to a life insurance policy, means a sum which is -

(a) in any case in which an amount is payable in consequence of death other than a case falling within sub-clause (b) below, the amount payable on death, and

(b) in any case in which the benefit under the policy in question consists of the making, in consequence of death, of the payments of annuity, payment of a sum by instalments or any other kind of periodic payments, the present value of that benefit, less in either case the mathematical reserves in respect of the relevant policies.';

(c) after sub-section (2), insert the following :-

"(2A) If, at any time an insurer does not maintain the required solvency margin in accordance with the provisions of this section, he shall, in accordance with the directions issued by the Authority, submit a financial plan, indicating a plan of action to correct the deficiency to the Authority within a specified period not exceeding three months.

(2B) An insurer who has submitted a plan under sub-section (2A) to the Authority shall propose modifications to the plan if the Authority considers it inadequate, and shall give effect to any plan accepted by the Authority as adequate.

(2C) An insurer who does not comply with the provisions of sub-section (2A) shall be deemed to be insolvent and may be wound up by the court.";

(d) after sub-section (6), insert the following :-

> "(7) Every insurer shall furnish to the Authority his returns under section 15 or section 16, as the case may be, in case of life insurance business a statement certified by an actuary approved by the Authority, and in case of general insurance business a statement certified by an auditor approved by the Authority, of the required solvency margin maintained by the insurer in the manner required by subsection (1A).".

38. Section 70, in sub-section (1), for "the Controller a certificate of registration", substitute "the Authority, before the date of commencement of the Insurance Regulatory and Development Authority Act, 1999, a certificate of registration".

39. Section 95, in sub-section (1), for "in this Part -", substitute "In this Part, before the date of commencement of the Insurance Regulatory and Development Authority Act, 1999, -".

40. Section 101 A, -

(a) in sub-section (1), for "the Central Government", substitute "the Authority, with the previous approval of the Central Government,";

(b) in sub-section (2), for "the Central Government", substitute "the Authority".

41. Section 101B, -

(a) in sub-section (1), for "the Central Government", substitute "the Authority with the previous approval of the Central Government,";

(b) in sub-section (2), for "prescribed", substitute "determined by the regulations made by the Authority".

42. For sections 102 to 105, substitute the following :-

> "102. Penalty for default in complying with, or act in contravention of this Act, - If any person, who is required under this Act, or rules or regulations made thereunder, -

(a) to furnish any document, statement, account, return or report to the Authority, fails to furnish the same; or

(b) to comply with the directions, fails to comply with such directions;

(c) to maintain solvency margin, fails to maintain such solvency margin;

(d) to comply with the directions on the insurance treaties, fails to comply with such directions on the insurance treaties, he shall be liable to a penalty not exceeding five lakh rupees for each such failure and punishable with fine.

103. Penalty for carrying on insurance business in contravention of sections 3, 7 and 98. - If a person makes a statement, or furnishes any document, statement, account, return or report which is false and which he either knows or believes to be false or does not believe to be true, -

(a) he shall be liable to a penalty not exceeding five lakh rupees for each such failure; and

(b) he shall be punishable with imprisonment which may extend to three years or with fine for each such failure.

104. Penalty for false statement in document.- If a person fails to comply with the provisions of section 27 or section 27A or section 27B or section 27C or section 27D, he shall be liable to a penalty not exceeding five lakh rupees for each such failure.

105. Wrongfully obtaining or withholding property. - If any director, managing director, manager or other officer or employees of an insurer wrongfully obtains possession of any property or wrongfully applies to any purpose of the Act, he shall be liable to a penalty not exceeding two lakh rupees for each such failure.

105A. Offences by companies. - (1) Where any offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly :

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in subsection (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation. - For the purposes of this section, -

(a) "company" means any body corporate, and includes -

(i) a firm, and

(ii) an association of persons or a body of individuals whether incorporated or not; and

(b) "director", in relation to -

(i) a firm, means a partner in the firm;

(ii) an association of persons or a body of individuals, means any member controlling the affairs thereof.

105B. Penalty for failure to comply with section 32B. - If an insurer fails to comply with the provisions of section 32B, he shall be liable to a penalty not exceeding five lakh rupees for each such failure and shall be punishable with imprisonment which may extend to three years or with fine for each such failure.

105C. Penalty for failure to comply with section 32C. - If an insurer fails to comply with the provisions of section 32C, he shall be liable to a penalty not exceeding twenty five lakh rupees for each such failure and in the case of subsequent and continuing failure, the registration granted to such insurer under section 3 shall be cancelled by the Authority.".

43. In section 110A, 110B and 110C, for "Controller" wherever it occurs, substitute "Chairperson of the Authority".

44. Section 110G, for "Controller" at both the places where it occurs, substitute "Chairperson of the Authority".

45. Section 110H, in sub-section (1), for "under sections", substitute "under sections 27D,".

46. Section 114, in sub-section (2), -

(a) after clasue (a), insert the following :-

> "(aa) such other percentage of paid-up equity capital in excess of twenty-six per cent of the paid-up equity capital and the period within which such excess paid-up equity capital shall be divested under sub-section (1) of section 6AA."; (b) omit clauses (g) and (11).

47. After section 114, insert the following :-

> **114A. Power of Authority to make regulations. -** (1) The Authority may, by notification in the Official Gazette, make regulations consistent with this Act and the rules made thereunder, to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely :

(a) the matters including fee relating to the registration of insurers under section 3;

(b) the manner of suspension or cancellation of registration under sub-section (5E) of section 3:

(c) such fee, not exceeding five thousand rupees, as may be determined by the regulations for issue of a duplicate certificate of registration under subsection (7) of section 3;

(d) the matters relating to the renewal of registration and fee therefor under section 3A;

(e) the manner and procedure for divesting excess share capital under sub-section (2) of section 6AA;

(f) the preparation of balance sheet, profit and loss account and a separate account of receipts and payments and revenue account under subsection (1A) of section 11:

(g) the manner in which an abstract of the report of the actuary to be specified under the fourth proviso to sub-section (1) of section 13;

(h) the form and manner in which the statement referred to in sub-section (4) of section 13 shall be appended;

(i) the time, manner and other conditions of investment of assets held by an insurer under sub-sections (1), (2) and (3) of section 27D;

(j) the minimum information to be maintained by insurer in their books, the manner in which such information should be maintained, the checks and other vertifications to be adopted by insurers in that connection and all other matters incidental thereto under sub-section (8) of section 33:

(k) the manner for making an application, the manner and the fee for issue of a licence to act as an insurance agent under sub-section (1) of section 42:

(l) the fee and the additional fee to be determined for renewal of licence of insurance agent under sub-section (3) of section 42;

(m) the requisite qualifications and practical training to act as an insurance agent under clause (e) of sub-section (4) of section 42;

(n) the passing of examination to act as an insurance agent under clause (f) of sub-section (4) of section 42:

(o) the code of conduct under clause (g) of subsection (4) of section 42;

(p) the fee not exceeding rupees fifty for issue of duplicate licence under sub-section (6) of section 42;

(q) the manner and the fees for issue of a licence to an intermediary or an insurance intermediary under sub-section (1) of section 42D;

(r) the fee and the additional fee to be determined for renewal of licence of intermediaries or insurance intermediaries under sub-section (3) of section 42D;

(s) the requisite qualifications and practical training of intermediaries or insurance intermediaries under clause (e) of sub-section (5) of section 42D;

(t) the examination to be passed to act as an intermediary or insurance intermediary under clause (f) of sub-section (5) of section 42D;

(u) the code of conduct under clause (g) of sub-section (5) of section 42D;

(v) the fee for issue of duplicate licence under sub-section (7) of section 42D;

(w) such matters as specified under sub-section (2) of section 64UB relating to the Tariff Advisory Committee;

(x) the matters relating to licensing of surveyors and loss assessors, their duties, responsibilities and other professional requirements under section 64UM;

(y) such other asset or assets as may be specified under clause (h) of sub-section (1) of section 64V for the purposes of ascertaining sufficiency of assets under section 64VA;

(z) the valuation of assets and liabilities under sub-section (3) of section 64V;

(za) the matters specified under sub-section f(1A) of section 64VA relating to sufficiency of assets;

(zb) the matters relating to re-insurance under sections 101A and 101B;

(zc) the matters relating to redressal of grievances of policy holders to protect their interest and to regulate, promote and ensure orderly growth of insurance industry; and

(zd) any other matter which is to be, or may be, specified by the regulations made by the Authority or in respect of which provision is to be made or may be made by the regulations.

(3) Every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the regulation or both Houses agree that the regulation should not be made, the regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that regulation."

48. Section 116A, for "Central Government", at both places where they occur, substitute "Central Government, before the date of commencement of the Insurance Regulatory and Development Authority Act, 1999.".

THE SECOND SCHEDULE

(See Section 31)

AMENDMENTS TO THE LIFE INSURNCE CORPORATION ACT, 1956

(31 of 1956)

1. In the Act, for "Controller" wherever it occurs, substitute "Authority"

2. After section 30, insert the following :-

"30A. Exclusive privilage of Corporation to cease. – Notwithstanding anything contained in this Act, the exclusive privilege of carrying on life insurance business in India by the

Corporation shall cease on and from the commencement of the Insurance Regulatory and Development Authority Act, 1999 and the Corporation shall, thereafter, carry on life insurance business in India in accordance with the provisions of the Insurance Act, 1938 (4 of 1938).".

THE THIRD SCHEDULE

(See section 32)

AMENDMENT TO THE GENERAL INSURANCE BUSINESS

(NATIONALILSATION) ACT, 1972

(57 of 1972)

After section 24, insert the following :-

"24A. Exclusive privilege of Corporation and acquiring companies to cease.- Notwithstanding anything contained in this Act, the exclusive privilege of the Corporation and the acquiring companies of carrying on general insurance business in India shall cease on and from the commencement of the Insurance Regulatory and Development Authority Act, 1999 and the Corporation and the acquiring companies shall, thereafter, carry on general insurance business in India in accordance with the provisions of the Insurance Act, 1938 (4 of 1938).".

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Legal Officer

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2. Dr. H.H. Mensah, "International Law and the Violation of Human Rights", AIR 2000 Journal 40 - an elaborate note on the concept of human rights and protection of human rights under International Law.

3. Dr. K.R. Chandratre, "Does a Company Seeking Amalgamation Need to Have Power to Amalgamate as an Object in Memorandum of Association?", (2000) 24 SCL 172 (Magazine) - discusses at length several important issues pertaining to amalgamation with the help of judicial pronouncements.

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7. Debjani Naskar, "Intellectual Aspects of Trade Secrets and Doctrine of Confidentiality", (2000) 24 SCL 178 (Magazine) - examines and discusses the doctrine of confidentiality, the concept of trade secret, the historical background of the evolution of law and trade secrets, the difference between the law of trade secrets and the law relating to the employer - employee covenants, the know how and trade secrets, the remedies available, the philosophy and jurisprudence of trade secret law and the need for codifying the trade secret law in India.

8. G.D. Agrawal, "The Companies (Second Amendment) Bill, 1999 - Some Comments", (2000) 24 SCL 11 (Magazine) - elucidates certain important provisions of the Bill and opines that the amendments are investor-friendly and intended to make the management responsible and ensure better compliance with the Provisions of the Act.

9. G.P. Sathi, "Companies (Second Amendment) Bill, 1999 - A Critical Review", (2000) 24 SCL 193 (Magazine) - analyses the provisions of the Bill - observes that though most of the amendments are investor friendly some provisions are subject to different interpretations and therefore a review should be made before their enactment.

10. Gajavalli Nageswara Rao, "New Guidelines for Nidhis - An Appraisal", (2000) 25 SCL (Magazine) - examines the new guidelines issued by the Dept. of Company Affairs vide notification dated 1st November 1999 for functioning of a company declared to be a Nidhi or a Mutual Benefit Society under Section 620A of the Companies Act, 1956 and points out several provisions thereof which are likely to have an adverse effect on Nidhis.

11. Gopal Chalam, "Regulation of Collective Investment Schemes", (2000) SCL 35 (Magazine) - discusses salient features of the draft regulations and examines the legal framework within which such schemes operate in some developed foreign countries.

12. Gujjar Mal, "Some Aspects of Interest Pendente lite and Future Interest After the 1956 Amendment of Section 34 of the Code of Civil Procedure", (2000) 24 SCL 44 (Magazine) - critically analyse on the judicial exposition on the issue of "principal sum adjudged - in debt recovery suit. Under section 34 of the Code, the Court is empowered to award interest (i) from the date of the suit to the date of the decree, and (ii) from the date of the decree to the date of payment. The interest is to be calculated on the principal sum adjudged.

13. Jayanth M. Thakur, "Anomalous Definition of 'Resident' in FEMA", (2000) 24 SCL 169

(Magazine) - critically analyses the implications of the definition of 'non-resident' in FEMA and hopes suitable changes would be made to obviate the difficulties.

14. K. Balasubramanian, "Companies (Second Amendment) Bill, 1999 - Some Issues", (2000) 24 SCL 211 (Magazine) - deals with some of the amendments proposed in the Bill and discusses the proposed sections 17A and 58AA, 192A, amendments proposed in the existing sections 209A, 224(B) and 307 and also suggests that (i) since offence in deposit acceptance activity has been made cognisable, perhaps the word 'depositor' could also be included in Section 621 - (ii) the term 'listed public company' needs to be defined as was done in the Companies Bill, 1997.

15. M. Krishnan, "Companies (Second Amendment) Bill, 1999 : Election of Nominee Director by Small Shareholders", (2000) 24 SCL 189 (Magazine) - points out a few drafting errors in clause 122 of the Bill which provides for appointment of one director as a nominee of small shareholders who constitute a minimum of 1000 in number and who have shares of not more than Rs. 20,000/- with effect from the date to be specified and subject to such other conditions as may be prescribed by the Central Government.

16. N. Vijiya Kumar, "Section 21A of the Banking Regulation Act, 1949 : Question of Constitutional Validity", (2000) 23 SCL 78 (Magazine) -examines the question of constitutional validity of section 21A of the Banking Regulation Act which was inserted by Banking Laws (Amendment) Act, 1983 barring the court from reopening a transaction between a banking company and its debtor on the ground that the rate of interest charged by the banking company in respect of such transaction is excessive - critically discusses various judicial judgements and observes that the said Section 21A needs to be amended.

17. N. Vijiya Kumar, "Offences by Companies and Liability of Directors", (2000) 24 SCL 127 (Magazine) - examines various provisions of some special statutes such as Central Excise and Salt Act, 1944 (Sec. 9AA); Drugs Act, 1940 (Sec. 34); Essential Commodities Act, (Sec.10); (FERA 1973 (Sec. 68); Negotiable Instruments Act, 1881 (Sec. 141) etc. with regard to offences by companies with the help of judicial decisions and discusses how far a company liable for the offence and the extent of responsibility of the directors in respect thereof - and compares the position of liability of the persons/officers of the Corporation to that of England and USA.

18. N. Vijiya Kumar, "Section 22 of Sick Industrial Companies (Special Provisions) Act, 1985 - Need for Amendment", (2000) 24 SCL 27 (Magazine) - critically brings out various aspects of section 22 of the Act (supra) in the light of several judicial pronouncements - suggests that section 22 should be amended appropriately to forestall its misuse by unscrupulous elements in the industry.

19. Prakash N. and Vinay Reddy, "Insider Trading in the Global Context", (2000) 25 SCL 15 (Magazine) - discusses inadequacies in the existing legal provisions under SEBI (Insider Trading) Regulations, 1992 in view of several unforseen problems such as listing of Indian Companies' securities on foreign stock exchanges and the transborder nature of e-commerce.

20. R.K. Agarwal, "Right to File Cross Objection - Scope and Extent", AIR 2000 Journal 62 - discusses at length order 41 Rule 22 of Civil Procedure Code enabling the respondents to the cross-objection and its maintainability at the stage of Second Appeal.

21. R. Kalidas, "Companies (Second Amendment) Bill, 1999 - A Look", (2000) 24 SCL 7

(magazine) - examines the salient features of the Bill and highlights their likely impact whether the beneficial or otherwise on the corporate world.

22. R. Ravi, "Corporate Governance - The Ignored Side of the Coin", (2000) 25 SCL 35 (Magazine) - focusses on several aspects of corporate governance such as team effort, inter personal relations and duty of the management.

23. Somnath Vatsa & Vinay Reddy, "Hazards of Takeovers, Mergers, Demergers, etc. : The Western Experience," (2000) 25 SCL 13 (Magazine) - a brief note on the corporate restructuring by way of mergers, amalgamations, demergers, etc. and suggests that Indian Judiciary should play a proactive role to ensure shareholders' interests as the western experience in this regard has not been successful.

24. S. Venugopalan, "Criminal Complaint for Dishonour of Cheques", (2000) 24 SCL 135 (Magazine) - critically examines certain aspects of the offence under section 138 of the Negotiable Instruments Act, 1881 in the light of the various judicial pronouncements with special reference to Modi Cements Ltd. Vs. Shri Kuchil Kumar Nandi (1998) 2 Comp. LJ 8 (SC) and discusses the ingredients of the offence under section 138, effect of failure to give notice, refusal to receive notice, who can file the complaint, payment stopped by drawer and when offence under section 138 can be compounded.

25. Surendra V. Kanstiya, "Companies (Second Amendment) Bill, 1999 and Investors Protection", (2000) 24 SCL 214 (Magazine) - brings out the highlights of the Bill (supra) relating to investors protection.

Grammar and punctuation are hapless victims of the pace of life.

Chandrachud C.J., A. Varadarajan and Amrenda Nath Sen JJ in State of West Bengal and others vs. Swapan Kumar Guha and others.

It is a general Mistake to think the Men we like are good for every thing, and those we do not, good for nothing.

-Savile George

Here's to you, as goods as you are,

And here's to me, as bad as I am,

But as good as you are and as bad as I am

I'm as good as you are, bad as I am.

- Coughlin Pat

BOOK REVIEW

A GUIDE TO CUSTOMS ACT, 1962

BY

Dr. Nilima M. Chandiramani
Avinash Publications
B-10, MIRA, 21st Road, Chembur, Mumbai-400 071.
First Edition : January 2000 Price Rs. 250/-

V.K. Jayakar
Asst. Legal Adviser

1. The book titled, "A Guide to Customs Act, 1962" written by Dr. (Mrs.) Nilima M. Chandiramani, is indeed a book with a difference, in that it explains the complex concepts of Customs law in a lucid, co-ordinated and systematic manner free from technical jargons and without becoming verbose or voluminous. The author of this book, a scholar and educationist, is senior Professor in the Department of Law, University of Mumbai. She has participated in innumerable national conferences and presented papers in international conferences - LAWASIA (Beijing); UNCITRAL (Vienna); WIPO (Geneva); LAWASIA (Tokyo and Hiroshima); ICEF (Paestum); AFCC (Washington, D.C.) She has delivered lectures at universities and institutions in Europe and the Far East. She was a member of the Task Force, Ministry of Environment & Forests, to evaluate introduction of market based instruments to abate industrial pollution. Her published works include several articles in national and international journals and periodicals and books on 'The Law of Contract : An Outline', 'Carriage of Goods by Sea and Multimodal Transport', 'The Companies Act : An introduction', 'World Trade Organisation and Globalisation : An Indian Overview' and 'Law of Sale of Goods and Partnership : A Concise Study'.

2. The author was selected by the University Grants Commission to write this book and the U.G.C. has funded its execution. The first edition of this book was published by Avinash Publications, Mumbai in January 2000. The book is divided into 32 chapters and consists of 472 pages. More than a thousand cases decided by the Supreme court, High courts and Customs Tribunal including the latest judgements on Customs law have been incorporated in the book at appropriate places linking them with the relevant provisions of the Customs Act. The author has taken special care to ensure that the interpretation laid down by the Courts in landmark judgements, judicial controversies and shift in judicial opinions on major issues are clearly brought out highlighting the principles of law enunciated by the judiciary. The book discusses all the provisions of the Customs Act proceeding topic-wise and the up-to-date legislative amendments have been included. This makes the book complete and exhaustive.

3. The book opens with a 'Foreword' by Shri Moheb Ali, Addl. Director General, National Academy of Customs, Excise & Narcotics, Mumbai followed by Preface, Acknowledgements, Contents and Table of cases. The first chapter is 'Introduction' in which the origin of the custom of charging customs duties and the interpretation of the Customs Act as a fiscal statute and as a preventive statute is briefly traversed. This is followed by short chapters on classes and powers of officers of customs, appointment of Customs Ports, Airports, Warehousing Stations and prohibitions on importation and Exportation of Goods. In Chapter 5, the prevention and detection of illegal imports and exports has been dealt with in detail. The author points out that the Amendment Act of 1969, which came into force on January 3, 1969 introduced Chapters IVA, IVB and IVC in the Customs Act. Additionally, Notified Goods (Prevention of illegal Import) Rules, 1969, and Specified Goods (Prevention of Illegal Export) Rules, 1969 were framed. The object of the regulatory provisions was to detect illegally imported goods and to prevent their disposal and also to prevent and detect illegal export of goods. Thereafter, the author discusses in

detail the new Chapters, introduced by the said Amendment Act, 1969. The case Bhanabhai Khalpabhai vs. CC (1996) 62 ECR 500 (SC), is referred to, in which it was held that as the appellant did not comply with any of the requirements of Chapter IVB of the Customs Act, he was guilty of fraudulent evasion of the prohibitions imposed under section 11 of the Customs Act.

4. The levy of duties of customs is dealt with in Chapter 6. Section 12 of the Customs Act empowers the customs authorities to levy import and export duty. The author is of the opinion that the terms 'export', 'import' and 'India' assume importance and discusses the meaning of these words supported by relevant case law. The issue whether section 12 is the charging section is taken up next, citing case laws on the point. The author states that a larger bench of the Hon'ble Supreme Court consisting of five judges in Hyderabad Industries Ltd. vs. Union of India AIR (1999) SC 1847, has overruled the earlier Supreme Court decision in Khandelwal Metal & Engineering Works vs. Union of India AIR (1985) SC 1211, and held that the charging section is section 3(1) of the Customs Tariffs Act and not section 12 of the Customs Act.

5. In Chapter 7, the valuation of Goods provided in section 14 is discussed in detail. The author indicates the changes made in section 14 of the Customs Act by the Customs (Amendment) Act of 1988. As a result of the amendment by virtue of section 14 (1-A), the price of imported goods has to be determined only in accordance with the Customs Valuation (Determination of Price of imported Goods) Rules, 1988. On the issue whether the assessable value of the imported goods has to be determined for the purpose of customs duties taking into account the transaction value or normal international price, the author has discussed the conflicting versions of judicial and customs authorities. The Court decisions in which the transaction value has been accepted and those decisions in which the transaction value has been rejected have been segregated. An important question considered is whether the date of contract or the date of importation is the relevant date for valuation and assessment of the imported goods. The author has referred to Rajkumar Knitting Mills Pvt. Ltd. vs. CC (1998) 77 ECR 236 (SC) in which the Supreme Court has, interpreting the words "ordinary sold or offered for sale" used in section 14, held that the relevant date for the purpose of valuation and assessment is the date of importation or exportation since the said words should be read in combination with the words which precede and follow them.

6. Chapters 9, 10, 11 and 12 deal in detail with the topics of assessment of duty, remission of duty, exemption from duty and refund of duty. The author mentions that the power to assess is of quasi-judicial nature and has relied upon certain Apex Court decisions. It was held in Union of India vs. Verma AIR (1957) SC 882, that assessment is a quasi-judicial function and the assessee must be given an opportunity of being heard or else it would amount to violation of rules of natural justice. Again in ACCE vs. National Tobacco Co. (1978) ELT (J 416) SC, it was observed that assessment, being a quasi-judicial process involves proper application of mind to facts as well as to law. The powers of the Central Government to grant exemption from duties of customs is given in section 25 of the Act. The author brings out the distinction between section 25(1) and section 25(2) referring to the case Bombay Conductors and Electricals Ltd. vs. Government of India (1986) 23 ELT 87 (Del). In this case, the Court held that the notification exempting goods under sub-section (1) grants exemption generally and hence must be published, whereas an exemption order under sub-section (2) grants exemption in special cases and hence is not required to be published. Another issue examined is whether the Central Government, having

issued an exemption notification under section 25, can withdraw/modify the exemption notification to the prejudice of the importer or is it bound by the principle of promissory estoppel? The author has referred to several cases on this issue and says that after its decision in Union of India vs. Paliwal Electricals Pvt. Ltd. (1996) 64 ECR 312 (SC), the Supreme Court in P.T.R. Exports (Mad) Pvt. Ltd. & Ors. vs. Union of India & Ors. (1996) 66 ECR 7 (SC) reiterated that the Government has the power to withdraw or modify an exemption notification depending on the economic policy and the general public interest. The author has discussed at length the interpretation of exemption notification by the Courts of law. A number of cases have been referred to relating to exemption granted to different types of goods. For instance, in Dunlop India Ltd. vs. Union of India AIR (1997) SC 597 the question to be decided by the Supreme Court was whether vinyl pyridine latex was rubber. The Court observed that as the term rubber was not defined under the Customs Tariff Act, Vp latex should be understood as, people in trade and commerce understand it. Accordingly, it was held that as it is regarded as rubber by people in trade, Vp latex is rubber.

7. Regarding refund of duty, the author points out that changes were introduced in section 27 of the Act regulating the refund of customs duty, after its substitution by section 10 of the Central Excises and Customs Laws (Amendment) Act, 1991. The amended provisions are then discussed in detail bringing out the developments in the law. The author is of the opinion that section 10 of the Amendment Act of 1991 laid to rest the controversy over the application of the equitable doctrine of unjust enrichment, to refund claims under the Act and that the doctrine has been made statutorily applicable. In Mafatlal Industries Ltd. vs. Union of India (1997) 68 ECR 209 (SC), the constitutional validity of section 10 of the said Amendment Act 1991 was challenged. The main ground of attack was that the amended provisions relating to refund of excise and customs duties ousted the jurisdiction of the Civil Court, because recourse to section 72 of the Contract Act as an alternative and independent remedy for claiming refund was not permissible either under the Central Excises and Salt Act or the Customs Act. A majority of the judges of the nine judge constitutional bench upheld the constitutional validity of the Amendment Act observing, inter alia that the provisions of Section 27 being express, clear and unambiguous, each and every claim for refund must be made only under and in accordance with the provisions of the said section.

8. The author has in Chapter 13 on 'Advance Rulings' referred to the Finance Act, 1999 which has introduced a new chapter, Chapter VB (sections 28-E to 28-M) in the Customs Act. The Chapter provides a scheme under which binding rulings in respect of import and export activities can be given by the prescribed authority in advance of the commencement of the activities on questions of law or fact regarding the liability to pay duty. The topics of conveyances carrying imported/exported goods, clearance of goods and transit/ transhipment, transport of goods find their due place in the book. Regarding the provisions in the Act for warehousing, it is pointed out that the objective of public or private warehousing is to afford the facility to importers to store their imported goods for a fixed period till the goods are cleared for home consumption or for re-export. The various related aspects such as warehousing bond, warehousing period, control over warehoused goods, payment of rent and warehouse charges, removal of goods from one warehouse to another, clearance of warehoused goods for home consumption and for exportation and cancellation of warehousing bond are discussed. The author points out that the Customs (Amendment) Act, 1991 had inserted a new provision, section 59A under which the importer of any goods (other than capital goods intended for 100% export-oriented undertaking) which were

entered for warehousing and assessed to duty, had to deposit fifty per cent of the duty assessed and had also to execute a bond binding himself in a sum equal to twice the amount of the balance of such assessed duty. in Jindal Strips Ltd. vs. Union of India (1992) 60 ELT 203 (BOM) (DB) section 59A was challenged as violative of Article 19(1)(g) and Article 265 of the constitution as it made the deposit of fifty per cent of the assessed duty mandatory. The Court held that the importer has no fundamental right to import goods and to take advantage of payment of duty at a future date depending upon his covenience. Section 59A does not altogether take away the facility for deferring the payment of duty but it merely imposes certain conditions for availing the facility which are neither unreasonable nor against public interest. The author adds that despite this judgement, section 59A was omitted by the Finance Act, 1994.

9. The provisions relating to Drawback, Baggage, Goods imported or exported by post, Stores and Coastal goods are dealt with under separate chapters. It is stated that Coastal goods are goods other than imported goods transported in a vessel from one port in India to another {Sec. 2(7)}. The author informs that the Finance Act, 1995 inserted a new provision, viz. section 98A in the Customs Act. Under this section the Central Government may in public interest, by notification in the Official Gazette, exempt generally, either absolutely or with conditions, coastal goods or vessels carrying coastal goods, from all or any of the provisions of the Chapter. Further, in exercise of such powers the Central Government had issued a notification in September 1997 freeing the costal movement of trade from the rigorous chains of standard customs procedures. Again, in February 1998 the Central Government in exercise of its powers conferred by section 98A had issued a notification further relaxing the customs procedure for coastal vessels. For instance, in terms of the notification, vessels carrying coastal goods are no longer required to file import and export manifest. The contents of the said notifications are mentioned in brief.

10. The investigative and penal provisions of the Customs Act relating to power of search, power to arrest, power of enquiry, power to seize, confiscation, imposition of penalty, adjudicatory proceedings and settlement of cases are narrated by the author in detail dividing each topic neatly into various heads. In the Chapter 'power of search' the author explains as to what constitutes 'reason to believe' in the context of the statutory requirement of reasonable belief, that a person has hidden the goods which are liable to confiscation, under sections 100 and 101 of the Act. According to the author the said phrase 'reason to believe' has been the subject matter of judicial consideration in many cases and then discusses the cases. In ACC vs. Charan Das Malhotra (1972) SC 689, it was held that there must be a direct nexus or live link between the material coming to the notice of the customs officer and the formation of his belief. In other words, there must be a rational connection between the reasons for the belief and the holding of belief. Regarding the procedure for search the author among other cases refers to a recent case T. Hamza vs. State of Kerala (1999) 84 ECR 17 (SC) in which the appellant, whose person was searched, was asked if he wished to be taken before a Gazetted Officer or Magistrate only after the brown sugar was seized from him. The Court held that, as the condition laid down in section 50 of the NDPS Act was not complied with, search and seizure were not sustainable. The author has also examined the question whether illegality of search under section 105 affects the validity of seizure of the goods/documents/things under section 110 of the Act, referring to decided cases.

11. In the Chapter 'Power of Enquiry' the author has examined four vital issues which are as

follows :

(a) Are customs officers police officers?

(b) Are the statements, made by the person interrogated, hit by Article 20(3) of the Constitution of India?

(c) Are the statements or confession made by the person examined or summoned, inadmissible under section 25 of the Evidence Act?

(d) Is the person interrogated entitled to the presence of a lawyer?

The author has referred to Naresh J. Sukhawani vs. Union of India (1996) 62 ECR 366 (SC) in which the Court held that a statement given by a co-accused under section 108 of the Customs Act, being a material piece of evidence collected by the customs officer, can be used not only against the co-accused himself but also against the other accused; and this is so even when there is no other independent evidence to corroborate it. This was endorsed in S.S. Chhabria vs. Union of India and others (1997) 68 ECR 29 (SC). In the Chapter 'Power to seize' the author provides answers in detail to questions such as who can seize, what can be seized, when can be seized and from whom can be seized. Regarding the return of seized goods, the author examines Court decisions in respect of the validity of ex-parte extension order and states that in Harbans Lal vs. CCE & C, Chandigarh (1993) 48 ECR 219 (SC), it was once again reiterated that an ex-parte order extending the time for issuing a show cause notice shall vitiate the proceedings under section 110 of the Customs Act. The Court held that while extending the time under the proviso to section 110(2), the person concerned is entitled to a notice regarding extension of time. Further that the seized goods on expiry of the six-months period must be returned to the person concerned.

12. In the Chapter on 'confiscation' the author discusses elaborately all the sixteen circumstances enumerated under section 111 of the Customs Act, under which imported goods are liable to confiscation. One of such circumstances arises when the imported goods are not mentioned in the import manifest. The author refers to Union of India and another vs. Mustafa and Najibai Trading Company and others (1998) 77 ECR 624 (SC), wherein it was held that since the seized goods were prohibited goods and they were not mentioned in the import manifest, their import was illegal and hence confiscation under clauses (d) and (f) of section 111 was justified. Some of the other circumstances which may justify confiscation are if goods are imported contrary to any prohibition, order of clearance not produced, non-declared baggage, material mis-declaration, illegal transit of imported goods, non-compliance of condition etc. The author further discusses other aspects such as confiscation of goods attempted to be improperly exported, confiscation of conveyances, confiscation of packages, confiscation of goods used for concealing smuggled goods, confiscation of smuggled goods despite change in form and confiscation of sale proceeds of smuggled goods.

13. In the Chapter 'imposition of penalty' the author points out that whereas confiscation proceedings are proceedings in rem, penalty proceedings are proceedings in personam. The clauses (a) and (b) of section 112 are differentiated. Discussing the exercise of power of penalty, the author refers to various cases in which the penalty was justified or penalty was set aside or penalty was reduced. The penalty for attempt to export goods improperly (section 114); penalty

for not accounting for goods (section 116); penalty for contravention not expressly mentioned (section 117) are also discussed separately. Keeping in view the high degree of importance attached to adjudicatory proceedings, the author has discussed the topic in great detail under Chapter 29. On the one hand, the Chapter covers jurisdiction of civil courts, pecuniary jurisdiction of customs officers, confiscation proceedings, penalty proceedings, Mens Rea and burden of proof in confiscatory, penalty proceedings and under section 123. On the other hand, the Rules of natural justice such as show-cause notice and Audi Alteram Partem are covered. The author points out that though the general rule is that the burden of proving illicit importation or exportation of goods is on the department, there is one statutory exception to this rule and that is in the case of goods mentioned in section 123 of the Customs Act. In the case of goods specified or notified under section 123 of the Act the burden of proof that the goods are not smuggled lies on the person from whose possession they are seized. But if the goods are claimed by any person as its owner, then the burden of proving is upon such owner. Regarding show-cause notice, the author discusses when it is mandatory, its contents, given by whom, given to whom, how notice is served, what amounts to service of notice and when notice has to be given.

14. The subject-matter of the last three Chapters i.e., Chapters 30, 31 and 32 are settlement of cases, appeals and criminal prosecution respectively. In Chapter 30 the author informs that Chapter XIVA (sections 127-A to 127-M) of the Customs Act was inserted by the Finance Act, 1998 which provides for the setting up of a Customs and Central Excise Settlement Commission. The function of the Settlement Commission is to entertain applications for settlement of cases relating to levy, assessment and collection of customs duty or any appeal or revision in connection with the same. The said Chapter XIVA is reproduced in the book. In Chapter 31 pages 407 to 459 deals with the topic 'Appeals' in much detail. The author discusses the topic under six heads. The author indicates that section 130-A, substituted by the Finance Act, 1999, now provides that the Commissioner of customs or the other party may on or after the 1st day of July 1999 apply to the High Court to direct the Appellate Tribunal to refer to the High Court the question of law arising from the order of the Tribunal. Regarding appeals to the Supreme Court the author has referred to a judgement of the Supreme court in CC vs. Swastika Woollen Mills (P) Ltd. (1988) 18 ECR 373 (SC) in which it was observed that if the Tribunal arrives at a conclusion on the basis of relevant facts supported by settled legal principles, then even though another authority such as Supreme Court or High Court may have a different view on the question, it will not be a ground to interfere with the finding of the Appellate Tribunal in an appeal under section 130-E. In the last Chapter, 'criminal prosecution' the author examines the scope of section 135 which provides for criminal prosecution and also the quantum of punishment/sentence and tackles the conflicting judicial opinion pronounced in different cases.

15. The book, original and distinctive, clearly displays the author's mastery of the subject, interpretative skills in the analysis of statutory provisions and a deep insight into the innumerable judicial verdicts. The author has taken care to ensure that the element of doubt or ambiguity, in the provisions of the Customs Act which have been discussed, is totally absent. The literary grace of language and presentation in a clear, epigrammatic style with forceful clarity and density of content, deserves to be commended. The ability of the author as a teacher is manifest, for the book successfully enlightens the reader by imparting thorough knowledge of the topics.

16. This book has already found its way into the legal section of the central library of the Reserve Bank. The book is strongly recommended as a valuable asset to be included in the

library of all banks and financial institutions.

Ejusdem generis : Where there are general words following particular and specific words, the general words must be confined to things of the same kind as those specified.

Estoppel : Stopped from denying

Ex-parte : Proceeding in the absence of the other party.

Habeas Corpus : A writ to have he the body to be brought up before the judge.

Inter alia : Among other things.

Inter vivos : Within the living beings .

Mense Profits : The rents and profits which a trespasser has received/made during his occupation of premises.

Pari passu: On equal footing or proportionately.

Per se : By itself taken alone.

Prima facie : At first sight; on the face of it.

L.D. LIBRARY : IMPORTANT NEW ARRIVALS

1. Reddy, Y.V.

Monetary and Financial Sector Reforms in India : A Central Banker's Perspective/Y.V. Reddy – Mumbai : UBSPD, 2000

332.1120954 RED 4659

2. Rao, M.B.

Joint Ventures : International Business with Developing Countries, M.B. Rao – New Delhi : Vikas Publishing House, 1999

346.17240682/RAO 4661

3. Agnihotri, J.C.

Cases and Material on dishonour of cheque/J.C. Agnihotri and Dheeraj B. Malhotra – Bombay Case Reporter, 2000

346.5409602648 AGN AND MAL 4663

4. Kashyap Subhash C.

Parliamentary Procedure – The Law Previleges, Practice and procedures/Subhash C. Kashyap Universal Law Publishing 2000 2 V

342.54057026 KAS 4664, 4665

5. Roy Chowdhury, S.K.

Laws of Trade Marks, Copyright, Patents an designs/S.K. Roychowdhury and H.K. Sahary – Kamal Law House, 1999 2V

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6. Jain Rajiv

Law of Patents : Procedure and Practice 2nd Ed/Rajiv Jain and Rakhee Biswas 2nd Ed.– Vidhi Publishing, 1999

346.54048602638 JAN AND BIS 4673

7. Gupta Rajesh

Law of Environment Protection in India : Concept and Precept/Rajesh Gupta – Capital Law House, 1999

341.75 GUP 4674

8. Qureshi Ashib H.

International Economic Law/Asif H. Qureshi – Sweet and Maxwell, 1999

341.75 QUR 4675

9. Singleton Susan

Business, the Internet and the Law/Susan Singleton and Simon Halberstam – Tolley, 1999, 533p.

343.09999026 SIN AND HAL 4677

10. Matthan Rahul

The Law relating to Computers and the Internet/Rahul Matthan – Butterworth, 2000 442p.

343.0999026 MAT 4678

11. Democracy, Human Rights and the rule of Law : Eassys in honour of Nani Palkhivala/Edited by Venkat Iyer Butterworth, 2000

341.4810268 IYE 4679

12. Subramanian N.

A Practical Guide to capital gains/N. Subramanian 3rd ed. – Snow White, 2000.

343.5405245 SUB 4680

Law and order is often denounced as a code word. But we cannot abandon the English language because it has been turned into code words, And no responsible lawyer or politician can abandon the fight to make law and order the Rule of Law that works instead of a code word that doen't work.

- Lindsey, John V., in "Law in the Streets", New York, State Bar Journal, December, 1970,

p.695.

The Law school picture has always been a changing one but the pace in regard to change was accelerated during the academic year 1967-68. It is likely that the accelerated pace will be maintained for some time to come.

- Casner, Andrew James, Acting Dean (1967-1968), Harvard Law School, Dean's Report, 1967-

1968 p.1.

Before I finish a law review article, I sweat blood for a month.

- Warren, Edward H., as quoted in Chaffee, Zechariah, Jr., Edward H. Warren, A Biographical Sketch", 58 Harvard Law Review 1109 (No 8 October, 1945) p. 1115.

LD NEWS

Foreign Visit/Study

Shri S.C. Gupta, Legal Adviser attended a seminar on Current Issues in Monetary and Financial Laws, offered by International Monetary Fund Institute, held at Washington from May 9 to 19, 2000.

Shri P.S. Bindra, Joint Legal Adviser attended the programme on Legislative Drafting at the International Law Institute (ILI), Washington D.C. in co-operation with Georgetown University from April 24 to May 12, 2000.

Good bye

Shri K.A. Najmi, Joint Legal Adviser took voluntary retirement from the services of the Bank at the close of business on 14 June 2000 to join the IFCI, New Delhi as Legal Adviser.

Welcome

Smt. Lakshmi Sundararajan, P.S. Grade 'A' reported to Legal dept. on 3rd April 2000 from the Secretary's Department.

Smt. P.S. Sakhardande, Asst. General Manager reported to Legal dept. on 17th April 2000. Kum. Bindu Vasu joined the services of the Bank as Legal Officer in Gr. 'B' on 22nd May 2000. Shri R. Sreedharan, P.S. Gr. 'B' reported to Legal Dept. on 23rd May 2000 from Secretary's Department.

Transfer

Smt. M. Vaidyanathan, Asst. General Manager was transferred to Chennai Office w.e.f. 25th May 2000.

This provision is made in a constitution intended to endure for ages to come, and, consequently, to be adopted to the various crises of human affairs.

- Marshall John

The American Constitution …….. no Constitution was written in better English.

- Churchill Winstone

MAIL BAG

Dear Sir,

Sub : RBI Legal News and Views

I had an opportunity to go through the contents of the house Journal of the Legal Department viz., RBI Legal News and Views of January-March 2000. I find the same interesting, informative and would come in handy in the discharge of my duties as a Legal Officer.

I would like to be a regular reader of your Journal. Therefore, I request you to kindly include my name in your mailing list.

Thanking You,

Yours faithfully,

D. Sura Reddy Flat No. 304 - A,
SEBI AAVAS (Temple View - III)
Raheja Township, Malad (East),
Mumbai-400 097.

Dear Sir,

Reg. : RBI Legal News and Views, Journal

With due respect, it is submitted that recently I had gone through your House Journal "RBI Legal News and Views" which is provided to me by my friend working in Legal Department of an undertaking. I found that coverage is wide and good and articles are of high quality. I am working as a "Law Officer" in Oriental Bank of Commerce and very much inspired by this journal. Your are therefore requested to kindly send me your house journal "RBI Legal News and Views" regularly at the undermentioned address so that I may keep myself updated in the

legal matters.

Thanking You,

Yours faithfully,

H.S. Phillip
Law Offcer, OBC
8/62, Moti Nagar,
New Delhi-110 015.

Ed. Note : The names of the readers have been included in the mailing list.